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T H R E E
D I S S E R T A T I O N S.

- I. ON THE FOLCLANDE AND BOCLANDE OF THE SAXONS.
- II. ON THE JUDICIAL CUSTOMS OF THE SAXON AND NORMAN AGES.
- III. ON THE NATIONAL ASSEMBLIES UNDER THE SAXON AND NORMAN GOVERNMENTS.

W I T H A
G E N E R A L I N T R O D U C T I O N,
A N D
N O T E S A N D I L L U S T R A T I O N S.

B Y
J A M E S I B B E T S O N, Esq. *K*
B A R R I S T E R A T L A W.

NON-IGITUR EXEMPLA MAJORUM QUÆRENDÆ, SED CONSILIUM
EST EORUM, A QUO IPSA EXEMPLA NATA SUNT, EXPLICAN-
DUM. CICERO.

T H E S E C O N D E D I T I O N.

L O N D O N:
P R I N T E D F O R R. F A U L D E R, N E W B O N D S T R E E T.
M D C C L X X X I I.

THE
DISSEMINATION

OF THE REVENUE AND FINANCE OF THE
FEDERAL GOVERNMENT

IN THE FISCAL YEAR OF THE
NINETEEN HUNDRED AND SEVEN

BY THE COMMISSIONERS OF THE
INTERNAL REVENUE

WASHINGTON

GENERAL INTRODUCTION

NOTES AND ILLUSTRATIONS



GENERAL INTRODUCTION.

THE three ensuing Dissertations were thrown into the world, at different periods, in a detached state. Their present collective appearance is to be attributed to the Author's conviction of their original incorrectness, to his desire of attoning for his former negligence by a scrupulous revision, and to the consideration of the natural connexion between the tenures, the parliaments, and the judicature of a Feudal Republic.

This connexion may be deduced from the junction of the civil and military characters which had been distinguished by the Romans, and were confounded by their conquerors. In the decline of the Empire, senatorial indolence was indulged by imperial jealousy. The Nobles were prohibited the use of arms: they amused themselves with pageant deliberations and superstitious ceremonies, and consigned the protection of the provinces to the mercenary exertions of hardy indigence ¹.

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The foundation of the schools of law and rhetoric augmented the number of the seceders from the martial discipline of their ancestors. The establishment of christianity introduced a third description of men, who, professing themselves the votaries of religion, were invested with authority, protected from insult, and relieved from the weight of political obligations.

Tho' the ecclesiastical pretensions were acknowledged by the invaders of the South, the civil distinction was disdained. The Chief renounced his dignity if he delegated the task of defence or of revenge; he animated his vassals by his example, and inspired them with congenial ardour. “*Turpe principi virtute vinci,*” “*turpe comitatu virtutem principis non ad-*” “*æquare.*”

The King bestowed on his companions the reward of their toil and of their attachment. But by assuming the name of vassals, they lost not the capacity of advising; they maintained their senatorial privileges, and debated with their arms in their hands. The right of judging his dependents was the original prerogative of the Comes: by the investiture of his fief, he added to his military character the civil relations of a legislator and a judge.

This intimate connexion of blended characters produced its natural consequence. In considering the tenure of the vassal, he obtruded himself upon me as a judge, and sometimes assumed in the Wittena-Gemote the attributes of senatorial dignity.

In inquiries of this nature, a knowledge of the language and literature of our ancestors is confessedly useful, perhaps essential. Those adventurous authors must be frequently confounded, who have penetrated the mines of antiquity, unskilled in discerning and unprepared to separate the metal from the adhering dross. In such a desultory disquisition, the most important phrases must be frequently mistaken, and sometimes converted, by an arbitrary interpretation, into the fragile materials of a fanciful hypothesis.

The greatest of our Lawyers is particularly deficient in his etymological attempts. His deductions from the Saxon law are so generally erroneous, that we are astonished at the facility with which he confounds terms, and perverts their meaning: to the period of the Norman conquest, and to the introduction of the Norman

language, we should doubt his assertions, and examine his authorities.

Sir Edward Coke, for it is to him that I dare allude, has sometimes entered into a tedious elucidation of a term, which conveyed in its name a sufficient commentary. As an example, I shall select the word *Withermam*, which he tells us is a species of distress, and *signified another taking*; but this technical phrase, in its original sense, expressed a *taking in opposition*; the precise meaning of the process, which it forcibly declares and intuitively explains ².

When a man, like this, has been betrayed into incorrectness by a deficiency in etymological information; we are scarcely surprized at the mistake of a Frenchman, in speaking of a title of honour peculiar to our own country ³: but our astonishment considerably increases, when an Antiquary and a Lawyer, a native of our island, prefers the error of Montesquieu to the accurate delineations of Hickes or Spelman ⁴.

The strange unauthenticated substitution of Cople for Eorl, in L'Esprit des Loix, and the History of Feudal Property; tho' it be in itself of little importance, is productive of collateral apprehensions in the wavering mind of a scepti-
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cal observer ; deceived in one instance, he doubts in others ; he is aware of the flights of imagination that mark the character of the President, whilst the accurate impartiality of the compiler of the Memoirs of Great Britain is admitted with some hesitation.

Another inducement to application is the facility with which we may obtain a knowledge of the Cimbric and Teutonic dialects. Somner and Gibson, Hickes and Wilkins, have been equally diligent and successful in smoothing the rugged way : and it is an enlivening thought to the liberal inquirer, that, by the incidental elucidations resulting from his researches, he may point the pleasantry of Chaucer, regulate the harmony of Spenser, and heighten the sublimity of Shakespeare. The uninitiated in the mysteries of Gothic learning would, perhaps, suspect me of refinement, should I describe, in the terms they merit, the copiousness of the Anglo-Saxon language, and the variety of its inflexions. Much less would they credit me should I assert, that the poetry of our ancestors disdained the jingle of rhyme, whilst it possessed a considerable portion of classical harmony and rhythmical animation.

There

There is another consideration which renders the study of legal Antiquities peculiarly interesting to an Englishman. When he penetrates the origin of the trial by peers, and contemplates the primary constitution of the national assembly; he reflects that they still exist in their ancient energy; improved without refinement, and modified without complication. The Frenchman is presented with a gloomy prospect, of juries that are no more, of assemblies of the States that are forgotten, and of parliaments that are despised: the comparison is mortifying; the investigation, without the comparison, uninteresting.

These are among the pleasures which attend even a cursory perusal of the remnants of our ancient learning; the advantages that redound from it to a Lawyer, are too numerous to admit a recital, and too obvious to require it.

I am aware that I have been accused of refining upon the spirit of our ancient constitution. I have even been told, that warmth in the cause of liberty has induced me to paint the Saxon constitution in colours the most flattering to my fancy, and the most congenial with my principles.—I can only answer, that I am perfectly

fectly unconscious of the bias—and that if I have offended, it was an involuntary crime. Whatever my thoughts may be, I have too much veneration for truth to prostitute it for the support of an opinion, or to sacrifice it at the altar of a favourite divinity.

There are many who profess the most enthusiastic admiration of the constitution we are blessed with, in its pure, original perfection, who scruple not to declare, that its energy is impaired and its fabric shattered, and that so far from gratifying the people with elegance of symmetry and chastity of design, it oppresses them with the weight of ponderous and disjointed ruin.

To such men I would propose an assiduous and accurate research into first principles. Let them investigate the seeds of popular independence, let them pursue it in its various forms; blasted for a moment by prerogative, revived by the exertions of resistance. Let them admire the virtue of their progenitors, and feel their own degeneracy. After this review, let them preserve, if they are electors, their independence; if they are elected, their dignity.

But

But few of this description of men would profit by my advice. They are so perfectly indifferent to every thing but the *Name* of the constitution, that the revolution would, I doubt not, be flattering, should the representatives of the people be nominated by the Crown. The task of attention to inferiors, and of familiarity with mechanics, would no longer be imposed; whilst the more elegant, but not less disgraceful, species of servility could hardly be increased. Like the successful candidates for the Consulship at the period of Roman declension, (to use the words of an Historian, the greatest merit of whose *writings*, admirable as they are, is the spirit of liberty which they breathe) “ they would affect to deplore the
 “ humiliating condition of their predecessors,
 “ who had been reduced to solicit the votes of
 “ plebeians, to pass thro’ the tedious and ex-
 “ pensive forms of a popular election, and to
 “ expose their dignity to the shame of a public
 “ refusal; whilst *their* own happier fate had
 “ reserved them for an age and government, in
 “ which the rewards of virtue were assigned by
 “ the unerring wisdom of a gracious sovereign.”

But

But still, I trust, there are many, whose habits of thinking are confirmed by experience and consecrated by example; who, in spite of the wanton ridicule of unprincipled levity, have the virtue to declare their attachment to the genuine spirit of our constitution, and the firmness to defend its purity from prophanation.

Blue Hill, I said, I saw the whole
history of this thing recorded in experience
and collected by example; and in spite of
the various kinds of opposition, I
have the same feeling of attachment to
the good as I have in our country, and the
desire to do good is the same.

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A

DISSERTATION

ON THE

FOLCLANDE AND BOCLANDE.

INTRODUCTION.

THE various tribes of barbarians that inhabited the northern regions of Europe and Asia were closely connected in their manners, customs, and institutions; the circumstances in which they disagreed were minute, the great outlines were the same.

A warlike independent spirit, the ferocity of manners which it ingendered, an aversion to agriculture, and a contempt for the calmer occupations of life were every where conspicuous; hunting was their only amusement, and war their only profession: hospitable and friendly in their tents, treacherous and implacable in their incursions, they treated their guests with kindness, their prisoners with barbarity.—

In these instances the Saxon on the shore of the Baltic was not to be distinguished from the Hun on the banks of the Araxes 5.

From the wandering mode of life to which the Scythian and German nations were invariably addicted, they required an immense extent of territory; to this roving inclination, and to the necessity resulting from it, we ought to attribute their numerous emigrations.

The Gauls at a very early period invaded Greece, destroyed Corinth, and established a colony in the Lesser Asia: the Cimbri and Boii, when exterminated by Marius, were undoubtedly in quest of a more commodious settlement, for we find them upon their march with their wives and their children, their flocks and their herds, and every thing that they held either valuable or sacred.

After the resistance of a century, the Western Empire, deprived of its Generals and deserted by its Sovereigns, submitted to the reiterated attacks of the Gothic and Vandalic tribes, who raised upon its ruins a variety of states independent of each other, and directed by a new and extraordinary species of policy.

The government of the Germanic body we
are

are assured was of a republican nature; the various districts and cities of which it was composed elected their respective chiefs, who presided in council, determined controversies, and led their faithful companions to the combat ⁶.

Though nothing feudal can be discovered in this connexion between the chief and his vassal or Comes, the fee which the latter was bound to defend being no where described ⁷, it was, nevertheless, of infinite advantage to the founders of the feudal constitution by strengthening that mutual tie so essential to the very existence of a Fief.

When the nations of the North were compelled by the increase of population, or the impulse of invading tribes, to search for new habitations, they chose a supreme leader with the title of king, but with a prerogative extremely limited, and subject to the controul of the army. To him the conduct of the expedition was committed, the power of negotiating, and of dividing the conquered territory; and here his authority had ceased, but necessity interposed and made it perpetual.

Whilst they acted in conjunction and under the direction of their chief, their progress was
irre-

irresistible and their dominion secure; but if these ties had been dissolved, they had fallen an easy prey to their neighbours, or even to the subjugated people.

This consequence was foreseen by these rude and unlettered nations, and the result of their prudence was the feudal constitution.

For the preservation of their new acquisitions it was stipulated, that the grant of land from the king to his *comes* should be only conditional—that the latter should attend the former in his wars—and that the fee should revert to the king upon the death of the vassal—his perpetration of some enormous crime—or his non-performance of the military service; he being in these three instances either unable, unfit, or unwilling to defend his allotment.

As this constitution could not subsist without an head, the authority of the King was continued; but the vassals still retained their privileges; by them, in their assemblies or parliaments, he was advised, admonished, and controuled.

Here we see a rude sketch of the infant state of the feudal system, when it was first established in Europe between the sixth and the
ninth

ninth centuries by the Visi-goths, the Lombards, the Franks, and the Saxons; and by their Asiatic brethren at a much later period in the remotest parts of the East ⁸.

In the beginning of the seventh century the customs of the Feudists in Spain, Italy, and France had been collected and formed into a code by Reccesuinthus ⁹, Rotharis ¹⁰, and Charlemagne ¹¹. The Saxons had even then been long established in Britain; can we suppose that they alone neglected to adopt a political regulation so extremely well adapted to the necessities, and to the genius of the times?

This notion, however improbable, has been embraced by most of our legal antiquaries, many of whom have fixed the æra of the introduction of the Feuds at the Norman invasion, whilst others have contented themselves with allowing that they might possibly have been *known* to the Saxons, and have then quietly proceeded in the beaten track without any farther investigation.

When we consider that without a reference to the Folclande and Boclande of the Saxons, it is impossible to form an adequate idea of the point in question; we cannot help being surprized

prized that these terms have been so little attended to: we have been favoured indeed with a few conjectures, but the sanction of authority is wanting to almost all.

In this instance the great oracle of our law, Sir Edward Coke, is, like other oracles, ambiguous and unsatisfactory; he has left us two contradictory interpretations of this puzzling distinction of our Saxon progenitors, which, so far from elucidating the point, have involved it in tenfold obscurity ¹².

A blind subscription to authoritative dicta is always wrong, here it would be peculiarly absurd: deserted by our leaders, and bewildered in the mazes of antiquity, our last resource is in those best and least fallible guides the Saxon constitutions.

An enquiry of this kind has been made a few years since by a gentleman of known learning and extensive abilities, in the course of which we were presented with some very ingenious, though general deductions, the complicated nature of the work preventing a minuter discussion ¹³.

Upon the whole, however, this explanation is so agreeable to reason, and so strongly supported

ported by authority, that I should have continued in a state of perfect conviction, had it not been expressly controverted in a late publication, where a contrary hypothesis is maintained with some degree of pertinacity ¹⁴.

Though my faith was not much shaken by this *obiter* opinion, yet it excited my curiosity to discover the grounds upon which these adverse doctrines were founded; how I have succeeded the following pages will declare.

But before I proceed to the consideration of the feudal property under the Saxon government, I must beg to be indulged in a few preliminary observations.

The question may perhaps be asked in what manner is a modern lawyer interested in the present argument? to him the Saxon or Norman original of the feudal system is equally unimportant:—to which I answer; that an acquaintance with this celebrated constitution is essentially necessary to the illustration of the rules and maxims of the common law. For if we wish to pervade the spirit and reason of a law, we must investigate the circumstances that attended its institution, the character of the legis-

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lator,

lator, the nature of the government, and the genius of the times.

For example, many of the oppressive refinements of the feudal law were annihilated by the great charter, many of its wholesome regulations were confirmed; it follows, that without a knowledge of that law, we can never comprehend the efficacy of the constitutions of Runnymede, or do justice to our virtuous progenitors who sealed them with their blood.

The learning of our modern tenures appears at first view to be extremely obscure; we are apt, for instance, to reprobate *escheats pro delicto tenentis* as an iniquitous mode of punishing the innocent of the third and fourth generation; by a reference however to these *antiquated customs of the Feudists*, the darkness is dispelled, and reason and equity supply the place of absurdity and injustice.

If we attribute to the Normans the introduction of the *Beneficium* or Feud, with its necessary consequences, as well as its oppressive deductions; we must regard it as an innovation upon the common law, the arbitrary imposition of a tyrant inimical to the liberties of the suspected subjects of his acquired territory.

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If we derive the feudal constitution from the Saxons, it assumes a milder form; we connect it with a government that tended to promote the liberty of the subject, and to preserve it from infringement; with the names of Alfred and of Edward, and with the laws that have made those names venerable.

In an age of continual emigrations and consequently of invasions, the military tenure was well adapted to the sudden emergence of repelling an incursion; it was for this political benefit, and not for the emolument of their kings, that it was established among the Saxons.

It was under the Norman monarchs, that the feudal institutions were first perverted into instruments of oppression; a system originally simple in its construction, assumed in their hands a much more complicated form; aids were levied upon various pretences, primer seifins and arbitrary reliefs were rigorously exacted, the rights of wardship and marriage were asserted, and at length by the render of escuage, in lieu of the personal service, the military spirit entirely evaporated.

SECTION I.

BOCLANDE, Booklande, or Charter-land is described to be land granted by the King to his Thains, and limited to them and their heirs by the authority of a charter ¹.

Folclande or Folkland was that portion of the country which remained in the hands of the people in general, unsecured by charter, and unfettered by limitations ².

Boclande is sometimes denominated Thainlande, Tainlande, and Teinlande, from the Thegen, Tainus or Baron to whom it invariably appertained ³.

The Eorl, Gerefa, or Reve was the supreme governor of the Folclande, and hence it is frequently described under the name of Revelande. Sir Edward Coke informs us, that the Boclande differed nothing from Freehold land, and that the Folclande had the same affinity to Copyhold land ⁴.

We are not told whether these Freehold lands are to be considered as held in Knight-service, or in Socage, but we may collect from the following sections that the latter is implied; for the services which he enumerates as incidental

dental to Boclande, are not military and indefinite, but peaceable and certain, the sure indications of a Socage tenure ⁵.

This doctrine is laid down with all imaginable precision ; how great then must be our astonishment, when we read in another work of the same venerable and learned judge, that Knight-service is called Tainlande, and Socage Revelande, an explanation immediately adverse to the former ⁶.

If we embrace his first idea, and suppose that the Boclande was held in Socage, and the Folclande in Villenage, we involve ourselves in innumerable difficulties and errors, we controvert the indisputable authority of our ancient laws, we assert that the military tenure was unknown to our Saxon ancestors, and we very graciously bestow the property of land upon Villeins, who were always incapable of enjoying it.

The traits of Boclande and Folclande are first discovered in an ordinance of Æthelbert, which informs us that the country was divided into two portions, one of them more immediately appertaining to the King and his Thains, the other under the jurisdiction of the Eorl ⁷,
who

who was annually elected by the freemen of every shire, and was denominated Eorl, Ealdorman, or Gerefa, and in latter times Greve, or Reve⁸; he it was that convened the Folcmote⁹, which was composed of the possessors of Folclande, and together with the bishop administered the oath of allegiance to the freemen, over whom he presided when they sat in their judicial capacity, and whose decrees it was his duty to enforce¹⁰.

There is a notion that the Gerefa was vicergerent to the Eorl or Ealdorman, but this was certainly not the case, since we are informed by a law of Edward the Confessor that the Gerefa or Greve was anciently called the Ealdorman¹¹; they are also mentioned in distinct ordinances as the chief rulers of the shires without any hint of a subordination to each other¹². We ought therefore to interpret Gerefa, when used, as it sometimes is, in a secondary sense, Vicarius or Thrihin-Gerefa, that is, the superintendant of a third part of a county, consisting of three or four hundreds, over each of which a bailiff presided, who was subordinate to the Thrihin-Gerefa, as he himself was to the Eorl¹³; the Vice-Comes or Sheriff

was

was in fact a Norman officer, instituted of necessity, when the counties were converted into Fiefs, and when the dignity of Count became hereditary, as in that warlike age the administration of justice in the Folcmote of an extensive county, was totally inconsistent with the performance of the military service ¹⁴.

Under the Saxon government the charge of leading the freemen to battle was committed to the Heretoch or Duke, who was elected in every shire, and was invested with a coercive authority during the continuance of the war, and with a power of punishing the mutinous and the disobedient ¹⁵.

When Gaul was subdued by the Franks and Burgundians, the ancient free inhabitants were permitted to retain part of their possessions, and were placed under the jurisdiction of the Count, as were all the Liberi, whether Romans or Barbarians, who were not attached to particular lords by the ties of the feudal constitution ¹⁶.

The Duces, Mareschalli, and Constabularii, whose command extended over several provinces, were the leaders of the Liberi in the field ¹⁷; the Count presided in the provincial Synod, which was termed the Placita of the Freemen, who

who are described to be those who on the one hand had no Beneficia or Fiefs, and on the other were not subject to the base services of Villenage ¹⁸.

These free or allodial lands were governed by the Count, and his inferior officers the *Grafiones* ¹⁹ or *Vicarii*, and the *Centenarii*, who exercised a civil and military jurisdiction over their respective districts and hundreds ²⁰.

The Count in France was the supreme civil governor of the Freemen or *Allodiarum* of his province, so was the Eorl in England;—the Duke led the Freemen to battle, so did the Heretoch;—the inferior officers of the Count were the *Grafiones* and the *Centenarii*, those of the Eorl were the *Gerefas* of the Thrihings, and the *Bailiffs* of the *Hundreds*;—the court of the Count was termed the *Placita* or *Convention* of the *Allodiarum*, the court of the Eorl the *Folcmote* or *Assembly* of the Freemen;—after this can any one contend that the Eorl was neither more nor less than the Overseer of an herd of slaves; or in other words, that the Folclande was held in Villenage?

This opinion has been considerably strengthened by the false idea annexed to the *Ceorls*
(who

(who are always described as immediately dependent upon the Eorl) ²¹ and ought to be rendered *Coloni*, *Rustici*; the word *Ceorl* however has been often confounded with *Ceorlisc*, and has been translated (with an equal mixture of error and absurdity) *Servus*, *Villanus*, the proper interpretation of the latter ²².

We know that the jurisdiction of the Eorl was confined to the *Folclande*; if none but slaves inhabited that territory, of whom was the *Folcmote* in which he presided, composed? in this case it could not have existed, for the *Ceorlisc*a of the Saxons were the same wretched and despised beings as the *Villeins* of the Normans ²³, they were doomed to perpetual slavery on a particular spot, whilst those who dared to protect them from the brutality of their tyrants, or to harbour them for their own emolument, were liable to an exorbitant fine ²⁴.

On the other hand, if we suppose the *Folclande* to have been possessed by the Free *Ceorls* or *Yeomen*, we have a *Folcmote* exactly corresponding with the convention of the freemen in France.

The *Folclande* was certainly allodial, for it was held of no superior ²⁵; the freemen were

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subject

subject to the Eorl in a political, but not in a feudal capacity. They paid their share of the national taxes ²⁶, and were obliged to provide themselves with arms for their own immediate security ²⁷. But we no where find that herriots were exacted of them, that the military service was required, or that the Folclande escheated to the Eorl by the delinquency of the tenant.

The Folclande bore a striking resemblance in many particulars to the Gavelkind Tenure before it was corrupted by those Norman innovations the *acknowledgment of a superior*, and the *fealty* in consequence of it.

Gavelkind is the mode in which the Gavel-land was holden, the signification of Gavel-land is land liable to tribute or taxes ²⁸; in the league of Alfred and Guthrun the Dane we find the following passage: “ Si quis occidatur, nos omnes admittimus æque charum nobis Anglum & Dacum ad quatuor marcas fusilis auri, excepto Colono qui terram Censualem (Taxol-land) possidet, & redemptiones eorum sint æque charæ nimirum ducentorum solidorum ²⁹.

“ The Terra Censualis or Gavel-land was plainly so called to distinguish it from the Boc-lande

lande or the land held by Knights-service, from which, and all the slavery thereto incident, it was exempt by the payment of this Gafol or Tribute ³⁰."

The Gavelkind lands were devisable by will by special custom, they did not escheat in case of an attainder or execution for felony, neither did they descend to the eldest, youngest, or any one son in particular, but to all the sons together, any of whom might have alienated by deed of feofment at the age of fifteen; these are the principal properties of this tenure, which before the Norman conquest, according to the current opinion, was the general custom of the realm ³¹.

But as this appellation of Gavel or Gafol-land is only to be met with in a single instance throughout the whole body of our ancient laws, we may reasonably conclude that the tenure is described under some synonymous term, which of course must have embraced a very large share of the Saxon property ³².

This naturally refers us to the grand division of Folclande and Boclande. If we suppose the Gavel-lande to be the same as the Boclande, we involve ourselves in a labyrinth of absurdi-

ties; if on the contrary we hold it to be synonymous with the Folclande, we account for its peculiarities in a rational and satisfactory manner.

The Gavelkind lands are said to have been possessed by the Ceorls³³; now we know that these Ceorls or Coloni were also the possessors of the Folclande, that they owed no service to any particular lord, but were liable however to the payment of the national imposts³⁴. This accounts for the appellation of Gavel or Tributary land given to the Folclande, in contradistinction to the Bocclande, which was held of the King and his Thains by the performance of the military service.

By a law of Æthelbert³⁵ a great disparity was established between the Weregild³⁶ of a King's Thain or Theoden, and that of a Ceorl or an inhabitant of the Folclande; in the first instance the Weregild was fifty shillings, in the last only twelve. In the Salic law³⁷ the redemptio capitis of an Antrustio or King's Vassal was six hundred sous, that of a liber homo or a dependent of the Count, if a Frank two hundred, and if a Roman one hundred. In the league between Alfred and Guthrun above cited

cited we find the same if not a greater disagreement between the Weregild of the people in general, and that of the husbandmen, who are particularly excepted as inhabiting the Gavel-lands. The difference is rationally accounted for by supposing that in this instance, as in the others, the King's Vassals are marked out in the general description, and the Freemen, Allodiarium or the holders of the Folclande in the exception.

The Gavelkind land did not *escheat* in case of attainder or execution for *felony*. If we suppose it to have been the Folclande, the reason is obvious, it was perfectly *allodial* and held of no *superior*.

The Gavel-land was nevertheless liable to *forfeiture* for *treason* ³⁸; in like manner we are informed that the proprietors of the Folclande were subject to this mode of punishment, they are even pointed out to us in a constitution of Alfred in a very particular manner: " Si quis vitæ regis infidietur per se, vel per ultores mercede conductos, vel servos suos, vita privetur & omnibus quæ possidet:—ita etiam ordinamus pro omnibus personis tam colonis quam comitibus ³⁹:" that is, that the penalties contained
in

in this ordinance shall not only extend to the King's immediate vassals, the Thains and Theodens; but also to all other persons whatsoever, whether Eorls or Ceorls, who have taken the oath of allegiance, without the feudal incumbrances of Homage and Fealty.

Again, Gavelkind lands were devisable by will before the conquest ⁴⁰. We are expressly told that the Thains and Theodens were prohibited from alienating their Boclande to the prejudice of their heirs, and in opposition to their original charters ⁴¹; hence it appears that the law of Canute de intestatis (which certainly alluded to the possessors of Boclande ⁴²) can by no means be extended to real property, as a reference to the Saxon will render still more evident ⁴³.

The holder of the Folclande on the contrary was not restrained by these limitations, his land was allodial, and not usufructuary, and he disposed of it according to his inclination or caprice ⁴⁴.

In case of intestacy the Gavelkind lands were divided amongst all the sons, the Boclande we are well assured was invariably transmitted to the first-born; whether this was or was not the case,

case, with respect to the Folclande we are no where informed; but surely we have the greatest reason to suppose that in this particular, as well as in all others, it coincided with the Gavel-land.

When the Saxons were introduced into the kingdom by Vortigern for its defence against the Scots and Picts, they had neither time nor inclination for the culture of land; it is probable that this fell to the lot of the less warlike though more industrious Britons, who retained their former possessions under the powerful protection of their new allies.

In return however for fighting the battles of the Britons, the Saxons at length demanded a settlement for themselves. As they had by this time obtained a firm footing upon the island, the intimidated natives complied with their requisition, and assigned them the territory of Kent for the seat of the new and dangerous colony.

But as this settlement was *granted* to the Saxons for their services, and not *acquired* by their arms; the military tenure was not necessary to support a right, so intirely unimpeached and secure; the lands were accordingly divided among the followers of Hengist upon allodial prin-

principles and unincumbered with the feudal restrictions.

Here then we may date the origin of the Folclande or Gavel-lande, which always continued to be the prevailing custom of Kent, and was afterwards diffused throughout the whole kingdom by gifts extorted from the Britons, and by the bounty of the Saxon monarchs, who granted small tracts of uncultivated land to their needy, but at this period industrious and domesticated subjects.

When these fortunate barbarians had driven the ancient inhabitants to their woods and fastnesses, they were compelled by necessity to cherish the arts of peace. Their rugged tempers were softened, and agriculture grew into estimation. Content with the humble appellation of Ceorls, they lived in security under the equitable dominion of their Eorls. They even preferred the purchase of Folclande, to the donation of Boclande from their Kings; in the first instance they pursued their rural occupations without interruption, in the last they were called away by the military obligations of their tenure.

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So great were these conveniences, and so strong was this abhorrence of the military service, that we find the possessors of Gavel-land contending for their privileges with the Conqueror himself, and in general their firmness prevailed; but the Eorl from a *judicial officer* had now become a *feudal lord*, and the maxim, that “all lands must be holden,” had been adopted; hence by a kind of composition it was stipulated, that the Gavelkind customs should remain inviolate; but on the other hand, the oath of fidelity which had been taken to the King in the presence of the Eorl, was transferred to the Count himself, the attendance of the tenant at the Scyremote was enforced, and the land was said to be holden by fealty and suit of court ⁴⁵.

The few who did not defend their possessions, which at the same time were not considerable enough to be erected into fiefs, were divested of their privileges, but were suffered to retain their lands by performing certain *free services*, and complying with certain conditions ⁴⁶. These Free or Socage tenures were insignificant at first, but soon became of consequence by the disgavelling of Gavel-land, and by the enfranchise-

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ment of fiefs; for even in this humble state, the Socage had manifestly the advantage of the Feudal Tenures 47.

The tenures in Socage or Fraunke-Ferme 48 extend over the whole kingdom, the modern Gavel-kind tenures are confined to a particular division of it; hence it has been rashly concluded that the latter are derived from the former, though in fact they are only *collaterally* connected with each other, and ought to be considered as various modifications of the Folclande or Gavel-lande of the Saxons.

SECT.

SECTION II.

A FEUD, Fee, or Fief may be defined to be land granted by a Lord to his Vassal, as a reward for his past services in war, and as a bond to insure them in future.

I have already observed, that the Feudal Vassals were liable to the military service, and that the Fief escheated to the Lord by the neglect, the crime, and the death of the tenant.

The Tenants in Capite attended the King in his great council, and exercised a civil and criminal jurisdiction over the immediate Vassals of their respective Seignories.

It remains for us to examine whether the above relations subsisted between the Saxon monarchs and the Thains or Holders of Boclande, and between the latter and their Theodens or Rear-Vassals.

Thegen, Thainus, or Thain¹, in its primary signification is interpreted Miles, so the Cyninges Thegen is emphatically translated the King's Soldier; but as he was always an approved and illustrious warrior of the first rank, this denomination of King's Thain became a

title of honour, and may be considered as equivalent to Baro or Chivaler.

The King's Thains answered to the Antrustiones ² of the French law, like them they were the faithful companions of the King in the hour of danger, and like them they received a portion of the conquered territory as a reward.

The Fiefs upon the Continent were originally arbitrary, and entirely dependent upon the will of the King; the period of their duration was afterwards enlarged to a certain number of years, and then extended to the lives of the Feudatories, till at length they were permitted to deliver them down in an uninterrupted succession to their heirs ³.

We are well assured that the same limited donations existed in our own island during the uncultivated state of its interior policy; the discovery of the inconveniences that attended them may justly be attributed to the penetrating eye of Alfred;—he saw that the warlike ardour of the Thain was of necessity abated, when the welfare of his posterity was so immediately connected with his own life.—To remedy this defect, the Fiefs were made descendible to the lineal heirs of the acquiring ancestor, and the tye of the Thain to his chief became of a firmer texture.

Though the King's Thains are frequently mentioned in the earlier ages of the Saxon law, and the distinction marked out between their territories and those of the Eorl⁴, yet we do not find the Boclande particularly described as Terra-Hæreditaria, till we read of it in the following constitution of Alfred⁵; "*Si quis terram hæreditariam habeat, quam potentes aut Magnates ejus ipsi reliquerunt, tunc statuimus, ut eam non vendat a cognatis hæredibus suis; si adsit scriptura vel testis quod illi viro prohibitum sit, qui eam ab initio acquisivit.*"

By this it appears that the Charters which were granted by the King and his Thains to the holders of Boclande, were extended to the heirs of the first acquirers, who were permitted by the lords to retain the fiefs of their ancestors, but were prohibited from alienating or disposing of them in any manner repugnant to the designation of the original charter.

The Boclande is generally translated Terra-Hæreditaria, not because the fee descended to the present proprietor from his acquiring ancestor⁶, but because the holder of Boclande was bound by his charter to transmit it to the heirs of his body.

Before

Before the establishment of subinfeudations the feudal constitution was of a very lax and impotent construction; the Thains and the Antrustiones, amongst whom the great fiefs were distributed, were few in number, and jealous of each other's influence and reputation; when they were called into the field they were attended, if there was a prospect of plunder, by a cloud of dependents; but when this was not the case, the army was oftentimes composed of a few arrogant chieftains, without soldiers, and without unanimity.

As a provision against this inconvenience, the great vassals were permitted to infeoff their dependents, who received their fiefs of the mesne Lord, upon the same terms as he himself did of the Lord paramount.

In France, when the Fiefs became hereditary the Rear-fiefs partook of that quality⁷; but in Italy they still continue to be temporary grants, and liable to revocation at the pleasure of the chief⁸.

The rear-vassals amongst the Saxons were distinguished by the name of Theodens or Lords. and are described as Thains of an inferior degree, In the constitutions of London all the freemen
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of the realm are summed up under the distinct denominations of Eorl and Ceorl, Thegen and Theoden ⁹, which ought to be translated Earl and Yeoman ¹⁰, Baron and *Lord* ¹¹, the latter exactly corresponding with the Norman Vavassour, and the Dominus of the middle age.

The appellation of Drenches and Drengi was also applied to the rear-vassals, "*Hujus manerii aliam terram xv hominis, quos Drenches vocabant, pro xv maneriis tenebant.*"

"*Ad ipsum manerium pertinebant xxxiv Drenches, et totidem maneria habebant* ¹²." In these instances the two manors were originally holden of the King in Capite, and were afterwards parcelled out, the one into fifteen and the other into thirty-two smaller manors, and granted by the lord to the Drengi in the nature of Rear-fiefs; so that the Drengi ought to be considered as inferior Lords or Vavassours, and the Thaini as Tenants in Capite or Barons ¹³.

These Rear-fiefs are proved to be descendible by the law of Canute, in which the Herriot of the inferior Thain (*meþemþa þegna*) is distinguished from that of the King's Thain or Mesne Lord ¹⁴.

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The Saxon laws that are transmitted to us are all of a municipal nature; they regulate the interior policy of the realm, they annex punishments to crimes, and they point out the duty of the subordinate magistrates; but with respect to the law of nations they are totally silent, the rights of war and peace are no where defined. In so domestic a code we cannot be surprized that the attendance of the vassal in the field at the call of his lord should be seldom explicitly enjoined.

The laws of Edward the Confessor are principally declaratory of the ancient constitutions of the Saxons, which had been altered, or had fallen into disuse during the usurpation of the Danes ¹⁵; it is among these ordinances that we meet with the following passages in confirmation of the military service. “*Debent etiam universi liberi homines totius regni, juxta facultates suas, et possessiones, et juxta catalla sua, et secundum feodum suum et secundum tenementa sua arma habere, et illa prompta conservare ad tuitionem regni et servitium dominorum suorum, juxta preceptum domini regis explendum et peragendum; non debent illa invadiare, nec extra regnum vendere, sed hæredibus suis in*
extremis

extremis legare, ad servitium tenementorum suorum dominis suis explendum cum opus adfuerit ¹⁶." All the Freemen in the realm are included in the above constitution, the Socmen as well as the possessors of Boclande ; the former we have already observed were obliged to hold themselves in readiness for the immediate defence of the kingdom ¹⁷, the latter are here commanded to be armed according to the magnitude of their Fiefs, for the service of their Lords ; they are also prohibited from disposing of their warlike accoutrements, and are directed to transmit them to their heirs, to enable them to perform the obligation of their tenures, when their Lords should require it of their hands. Here we find the military service of the Vassals distinguished with the greatest precision from the mere defensive operations of the Liberi. The latter were never called upon but for the general defence of the realm, the former were liable to the service of their Tenures whenever their Lord had a real or a fancied injury to revenge.

From the words " *secundum feodum suum*," it is probable that there were degrees in the military service, that the possessors of the larger

fiefs were obliged to be completely armed, and were liable to a longer attendance than the less considerable Vassals; in like manner as in the Norman age, the Tenant of a Knight's Fee was bound to remain in the field for forty days, whilst the service of the Tenant of half a Fee was rendered in half that term ¹⁸.

The Reversion of the Fief to the Lord upon the nonperformance of the military service, is the first principle of the Feudal constitution, and has accordingly been enforced with the greatest rigour, in every country where that constitution has been established. Amongst the Saxons the consequences of deserting his Lord in time of actual war were still more dreadful to the Vassal, his life was the atonement for his offence; if a Theoden, his Boclande escheated to the Lord of whom he held it; if a Thain, it reverted to the King ¹⁹.

From the custom of commuting the most flagrant crimes for money, capital punishments are rarely to be met with in the codes of the Germanic nations; it was poverty alone that rendered the murderer and the robber amenable to those venal tribunals, where profit and not justice was equally the object of the prosecutor and

and the judge, and where the miserable offender was accused and condemned, not for committing the crime, but for being incapable of making the peace-offering of the Weregild and the Fredum ²⁰.

By a law of Alfred it was ordained, that if a Vassal conspired against his Lord, he should forfeit his possessions and lose his life, unless he redeemed it by the payment of the *æstimatio capitis* of his Lord; this however he was generally disabled from performing by the prior effect of the forfeiture ²¹.

It is in this rigorous constitution that we see the extreme solicitude of our Saxon ancestors for the preservation of the feudal ties; the murderer rarely met the reward of his crimes, death was the (almost) inevitable lot of the perjured vassal.

When the fiefs became hereditary, the investiture of the heir was qualified by a certain render to the Lord as an acknowledgment of the favour conferred upon him. This render under the different appellations of Herriot and Relief, was sometimes composed of arms, sometimes of money, and sometimes jointly of both.

The word Hereot or Herriot is a corruption of the Saxon Heregeat (*Degeat*) Bellicus Apparatus ²², which consisted principally of the delivery of certain arms and instruments of war by the heir, upon the demise of his ancestor, to the lord.

This usage appears to have been introduced by the Danes in conformity to the general custom of the Feudists ²³; but even at its first introduction, a certain stipulated sum in proportion to the degree of the vassals was annexed to the render of his arms. In the law of Canute we find the various species of arms and the particular sums ascertained with the greatest precision, according to the different ranks of the holders of Boclande ²⁴.

We may collect from another constitution of the same King, that, even at this early period, the Thains had arrogated a right of seizing their Herriots according to their own arbitrary assessments; this however is expressly prohibited, the Thain is confined to his lawful Herriot ²⁵, and is forbid to plunder the effects of his intestate vassal under these specious pretences. This acknowledgment of the Lord's benevolence has been hitherto described under the appellation of an

an Herriot, consisting of arms and money ; it was in the reign of Edward the Confessor that these incidents were changed.

By an ordinance which has been already referred to, the feudal tenants are directed to preserve their warlike accoutrements, and to transmit them to their heirs, for the performance of the service of their tenures, whenever necessity should require it ²⁶, or in other words, whenever they were summoned into the field to revenge a past, or to defend themselves from a present incursion.

By the service of their tenures we can never understand the render of the Herriots, because that was a *certain* event, the service in question, from the words "*cum opus adfuerit*," of a vague and indefinite nature.

Hence it is evident that the armamentum or mixed species of Herriots was abolished for political reasons under Edward the Confessor ; the Herriot was reduced to the simple payment of the usual stipulated sum, which, from its relieving the vassal from all other feudal burthens of a similar nature, assume the appellation of Relevatio or Relief, instead of Heregeat or Herriotum which was now become absurd.

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In a subsequent law of the same prince we find the following passage, “ Qui in bello ante Dominum suum ceciderit,—sint ei *relevationes* condonatae, & haberent hæredes ejus pecuniam & terram sine aliqua diminutione ²⁷ ;” the Reliefs here are evidently in money alone; the warlike accoutrements are no where mentioned.

The revival of the Danish exactions assumes a conspicuous place in the list of Norman incroachments; the appellation of the Reliefs was continued, but their nature was changed; the delivery of the arms of his ancestor was added to the pecuniary render of the heir; and the extent of both was ascertained by the will of the Lord ²⁸, till they were reduced within their original limits by the popular constitution of Henry the First ²⁹.

By the law of Edward the Confessor, all Archbishops, Bishops, Earls, and Barons, possessing the various franchises of Sac, Soc, 'Thol, Theam, and Infangthefe, had a judicial power conferred upon them over their military vassals, and all others who owed service within their respective manors; to be exercised however according to the customs of the realm, and with a proper respect to the prerogatives of the sovereign ³⁰.

Sac; Sacha appears to have been the right of receiving the fines and amerciaments arising from litigations and payable to the Thain by the Defendant if he was found guilty, and by the Plaintiff, ob falsam clamorem, if he was deficient in the proof of his accusation ³¹.

Soc, or Soca signified a franchise, a liberty, or a manor with an exclusive jurisdiction; and sometimes the jurisdiction itself ³².

Thol was the right of buying and selling, or holding a market within the seignory, and of receiving *Toll* from those persons who had any commodities to dispose of ³³.

Theam or Team was the power which the Lord possessed in his court of amercing those who, when called to warranty, were unable or unwilling to make it good ³⁴.

Infangthefe was the Lord's right of judging his vassals, when accused of theft and apprehended within the limits of his seignory ³⁵.

The Vassals of the Feudal Lords who possessed these several rights, (and they alone) could apply for justice, and be impleaded or accused in the domestic court of the manor; the Socmen or Liberi had recourse to the Hundred Courts and the Scyremote ³⁶.

Saxon

Saxon punishments were generally confined to pecuniary mulcts ³⁷, part of which were appropriated to the injured party, and part to the Count or Thain, as a compensation for the violated peace ³⁸.

The latter, under the appellation of the *Fredum*, is thus described in the barbarian codes, “ Si vero plus ad manum suam redimendam dederit, *fredum* Grafioni solvatur, tanquam si de ipsa causa convictus fuisset ³⁹.”

As the seignoral jurisdiction was so profitable, as well as honourable in its nature, we cannot be surprized that the lords were, in this instance, extremely tenacious of their rights, or that a remnant of their power should have been preserved even to this day.

When we survey the Saxon constitution, that rude and irregular mass of Gothic architecture, we are sometimes presented with a proportion so exquisite, a beauty so enchanting, that we no longer despise it as the obsolete establishment of a barbarian tribe, but revere it as the foundation of the Liberty of Britain.

A
DISSERTATION
ON THE
JUDICIAL CUSTOMS
OF THE
SAXON AND NORMAN AGE.

SECTION I.

IN the ninth century, and under the stupendous empire of Charlemagne, the Roman of the Augustan age would have surveyed with astonishment the uncouth arms, the irregular militia, the desolated cities, and the embattled castles of the petty proprietor of a feudal principality; he would have justly derided the absurdities of the judicial combat; and have haughtily condemned the obsequious homage of the Knight to the disdainful Lady of his affections.

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The Warrior despised elegance and was unacquainted with luxury, but he was the slave of pompous ceremony. The Lover evinced the ardour of his passion by a modest reserve and timid assiduities. The destroyers of the repositories of learning were generous and humane. The defacers of the monuments of art were affable and courteous.

This wonderful change in the opinions and manners of mankind was effected in some instances by the natural prevalence of the Northern manners, and in others by their gradual though rapid coalescence with those of the Romans. When the ancient possessors of Gaul and Italy were re-animated with the military spirit, the code of Theodosius was willingly exchanged for vague capitularies ¹, and the uniform decrees of justice for the fortuitous decision of the sword. When the native severity of the conquerors was relaxed by a voluptuous climate, the splendid ornaments of the amphitheatre were easily transferred to the decoration of the lists ², the love of war and of warlike magnificence became the characteristicks of one mighty nation.

Researches into customs and institutions of so novel and peculiar a nature are always instructive
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and often entertaining. But in an age of literary refinement we shrink with horror and disgust from legendary eloquence and monkish compilations; accustomed to the purity of Cicero, we stigmatize the language of our ancestors as bald and dissonant; initiated in the Roman jurisprudence, we involve their laws in a single term of indiscriminate reproach.

The *Gothic* taste of the author has nevertheless induced him to attempt an investigation of a few of the leading customs of the feudal æra, as they subsisted under the Saxon and Norman monarchies. It is with diffidence that he assumes so arduous a task; in the prosecution of it (as he possesses the requisites of leisure and opportunity) he intends to deduce the current from the spring, without confiding in the inaccuracy of translators, or the still grosser fallacies of second-hand quotations.

Though the general similitude between the various German tribes that settled in the Roman provinces was great and striking, yet they were possessed of particular usages of a distinct and independent nature. These usages they established in their respective districts, and from them originated the Municipal Constitutions

of the kingdoms and provinces of Europe 3. Throughout the extensive dominion of France the Salian and Ripuarian Frank, the Burgundian, the Visigoth and the Roman were judged by their own peculiar ordinances 4. In England the law was not indeed of so transitory a nature, it was confined to the country of its adherents; in the dominion of the Angles the Mercian customs prevailed, in that of the Danes the Danish, and throughout the remainder of the kingdom the West-saxon 5.

To intimidate others from the commission of crimes by the infliction of penalties upon those who have offended is the just and philosophical idea of punishment. But to argue from their passions has ever been the fate of barbarous and illiterate nations. The law of retaliation was eagerly adopted in the despotic regions of the East 6; its manifold absurdities were veiled beneath the plausible appearance of rigid and discriminative justice; whilst the spirit of revenge which it breathed was highly grateful to a susceptible and implacable people.

Nor was the German notion of punishment much more correct. Crimes of the blackest dye were ranked with those of a less malignant nature,

ture, and considered in the light of civil injuries. When a man was murdered, the value of his life was exactly ascertained, his father or his children received it, and the law was satisfied. If a virgin was deflowered, she was recompensed, and the ravisher punished by a pecuniary mulct. The robber restored the value of the property in question. Something may perhaps be said in favour of the latter regulation, but nothing surely can be more ridiculous, than to appreciate the human life and fix an equivalent for virgin chastity.

This custom was of a very ancient date, it had been adopted by the Germans in a state of paganism and barbarity ⁷; it was continued by them when they became the converts of Christianity, and of a social life; by a perversion of the divine attribute of mercy, they totally excluded justice; we are told by the law of the Boii, “ That men are prohibited by the fear of “ God from punishing offences with death ⁸.” In this sentiment the various tribes concurred; their ancient constitutions consist of little more than a long enumeration of crimes, with their several compensations precisely defined, according
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to the rank of the person injured, and the comparative guilt of the offender ⁹.

But before we take a nearer view of this species of punishment, it will be necessary to form some idea of the tribunal before which the criminal appeared, of the judges who presided in it, and of the mode of proof that they admitted.

No one by the Saxon law had any authority over a king's Thain ¹⁰ or Tenant in Capite but the king himself ¹¹; the Thains had also an extensive and peculiar jurisdiction over their rear vassals the inferior Thains ¹². The Freemen ¹³ were judged in the several courts of the Capitalis Friborgus, the Centenarius, the Gerefa of the Thrihing, and the Eorl or Ealdorman ¹⁴. These several officers were independent of the feudal constitution, those whom they judged were equally free with themselves; the causes of small importance were heard by the Friborgus, and so on in a regular progressive course, but the first decision was final; there was no appeal in the last resort from the inferior courts to that of the Ealdorman ¹⁵. By the celebrated regulation attributed to the excellent Alfred ¹⁶, all the Freemen of the realm were associated in small bodies, each consisting of ten persons; who

who were mutually bound by the tie of an oath to inspect into the conduct, and to answer for the crimes of the respective members of their community; the possessor of Allodial lands was produced or accounted for by the rest of the Friborg in the hundred court ¹⁷; the inferior Thain appeared with his fellows in the hall of his Lord ¹⁸; whilst the king's Thains were under a general obligation to support the innocent of their body and to secure the guilty ¹⁹.

Servants, who though not absolutely bondmen, were yet deficient in the qualifications annexed to good and legal men, were considered as under the proper controul and guardianship of their masters, whose duty it was to produce them, when required, in the court of the Thain or the Centenarius ²⁰.

When the delinquent absconded a strict search was made for the space of thirty days, and if it proved ineffectual, the chief of the Friborg and two other Freemen, accompanied by nine Compurgators, appeared in court, and exculpated himself and his Friborg from any participation in the crime on the flight of the offender: if there was a deficiency of Compurgators, the customary mulct, which frequently amounted
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to the *æstimatio capitis*, was levied upon the neighbourhood, with the greatest strictness, and in its fullest extent ²¹. The decision by negative proofs was allowed by the barbarian laws; it is said to be derived from the Mosaical dispensation ²²; be that as it may, it was undoubtedly a most preposterous mode of ascertaining the right, or rather a certain method of confounding it. By the law of the Saxons, if a king's Thain was accused of a crime, he appeared with twelve of his peers, and solemnly asserted his innocence, whilst his companions expressed a thorough conviction of the truth of the declaration: the person accused was absolved by their friendly intervention, and the positive testimony of his accusers was disregarded as frivolous, or reprobated as calumnious ²³.

The inferior Thain was intitled to the same privilege, except that a king's Thain was added to the usual number of his peers to increase their weight, and to give a sanction to their declaration ²⁴. We do not find, that the strict right of purgation was extended to the *Allodiarum*; it seems to have been confined to the Feudal Tenants. The Compurgators, it is evident, composed a kind of negative jury; they formed their
judgment

judgment not from evidence adduced in support of the prosecution, or from particular circumstances arising in favour of the accused, but from the general tenour of his conduct; they concluded that a man who had never been convicted of committing an atrocious crime was incapable of committing one, and of adding the aggravation of perjury; a mode of reasoning too fallacious to be seriously confuted; but thus it was that they argued when they acted with integrity; how often must they have been biased by prejudice, and directed by a culpable partiality towards their distressed (though guilty) brethren!

When the fact was notorious, if a murder (for example) had been perpetrated by a Thain in the midst of his fellows, he was liable to the payment of the Weregild without farther process. When the character of the accused was too infamous to procure Compurgators, he was obliged to submit to the infallible decision of the Ordeal. As the right of purgation by oath extended not to the Allodiarii, it is probable that every accusation was decided in their courts by the same cruel experiment: but this was a grievance of too intolerable a nature, and a re-

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medy was provided by the lenient hand of the indulgent Alfred; in every hundred court a jury of twelve men was sworn and invested with full authority to acquit and condemn²⁵: it was before this tribunal that common matters were determined and ordinary offences discussed; whilst those of greater importance and of a deeper dye were piously referred to the particular interposition of Providence²⁶.

This appears to be the true distinction between the Compurgators and the Jury, the first were admitted as negative, but conclusive evidence in the feudal courts, the last decided as judges in the allodial assemblies. They have frequently been confounded with each other and with the Pares of the French law; but the Pares were in fact the Jury of the court of the Antrustio; whereas the Saxon Thain presided by himself, and had no assessors. An independent Jury of twelve *Freemen*, who determined definitively in the *allodial* district, was unheard of upon the continent²⁷. The Jury in France was a creature of the Feudal constitution, and expired with its parent; the Jury in England was totally unconnected with the fiefs, it was the offspring of

of justice and of mercy, and will continue to flourish whilst they continue to be venerated ²⁸.

The forms of purgation by fire and water have been amply illustrated, and are generally known : there are a few observations however which naturally arise from the subject, and elucidate in some measure the miraculous manifestations of innocence attested by the Saxon historians ; whilst they confine the Ordeal within the narrow limits which, it is probable, it never exceeded.

The trial by Ordeal was variously conducted according to the rank and condition of the criminal : if he was a Thain or Freeman, he demonstrated his innocence by handling red-hot iron with impunity ; by marking the intervals of the nine glowing plow-shares hoodwinked and unshod ; or finally upon extraordinary occasions by *swallowing* the consecrated bread received from the hands of the Priest with the bitterest and the most solemn imprecations ²⁹. If he was a villain, he was directed to plunge his arm into a cauldron of boiling water, or was bound hand and foot and thrown into the nearest pool ; and if he floated on the surface or was scalded, he was condemned ³⁰.

The ceremony in every instance was rendered more interesting and solemn, by the celebration of Mass, and the devout recital of the form of prayer composed for the occasion ³¹.

But when a Freeman was accused of a misdemeanor, he appealed, in many instances, to the voice of his peers ³². The Thain had the privilege of clearing himself by the oath of his Compurgators ; and, if his character was not totally corrupt, it was here that the accusation ceased ³³. Even after the denunciation of the Ordeal, it was still in his power to redeem himself from the ignominious torture, by the payment of the composition annexed to the offence ; which we may reasonably presume was the mode that was generally adopted by the noble and the opulent, in preference to a shameful and hazardous contingency.

But should we suppose that Queen Emma, however strong the suspicion, was guiltless in reality of the scandalous imputation of incontinency ; was it impossible for this innocence to be manifested by the favour of the executioner, or the collusion of the attendant Priests ; by the transparency of the bandage with which her eyes appeared to be obscured, or the coldness
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of the iron over which she trod ³⁴ ? Should we suppose that Godwin was stained in effect with the blood of Alfred, might not the agitation of a guilty and superstitious mind have occasioned a bodily obstruction, might not the horrors of detection have prevented a renovation of the faculties, and might not death have been the inevitable and almost instantaneous consequence ³⁵ ?

The Villein indeed was more obnoxious to the assaults of boiling water ³⁶ ; but the hands of an hind inured to labour were able to endure a considerable degree of heat ³⁷, the scald was generally superficial ; whilst the effect of chance was easily converted into the decision of Providence, by the slightest negligence in the preparation of the water.

The test of immersion was usually confined to females of an inferior rank, nor was it impossible for the miracle which convicted the patient to have been sometimes produced by an emaciated body, or a peculiar fullness of garments.

From what has been said, we may fairly conclude that the Ordeal was by no means the general mode of trial prescribed by the Saxon consti-

constitution, that it was absurd in its principle, fallacious in its effects, and cruel in its process; for the experiment was repeated according to the magnitude of the offence, nor was it, in some instances, till after the third essay that the accused was convicted or exculpated ³⁸.

When the culprit was pronounced guilty, the judges proceeded to ascertain the amount of the Weregild; this was determined by the rank of the person injured, and was paid by the prisoner or his friborg to the complainant or his kindred ³⁹; a certain sum was also claimed by the judge of the accuser, if his allegation was refuted; of the accused, if he was convicted; this in the French law was called the Fredum, and by the Saxons Bota: it was considered by the Lord as a compensation for the violated peace, and in some instances for the loss of his vassal ⁴⁰.

The Compositions and the Freda ⁴¹ upon the Continent were limited with precision in several distinct ordinances, which however by the inveteracy of custom were frequently infringed ⁴²: in England the Weregild and the Manbote were as particularly determined, and more regularly exacted; the Weregild was increased

creased in proportion to the rank and wealth of the deceased ⁴³, the Manbote according to the dignity of the Lord ⁴⁴.

It was of these judicial perquisites that the revenues of the king and of his great vassals were principally composed, and hence it followed that the right of criminal jurisdiction was esteemed by the Lord to be a very valuable Franchise, and was generally granted as a reward, with other immunities of a more certain but less lucrative nature ⁴⁵.

The Weregild was originally considered as the redemption of the life of the criminal from the just indignation of the law; but from its being invariably paid it was soon reduced to a simple and regular amercement. In two instances alone do we meet with capital punishments unavoidable and incommutable; when the Vassal conspired against his Lord ⁴⁶; or when he deserted him in the day of battle ⁴⁷; so strong was the martial tie between the chief and his Comes, which had been knit by the Germans in their forests, and was closely and artificially entwined by the experienced hands of their more enlightened posterity ⁴⁸.

It

It was directed by an excellent Saxon law, that all sales of living or dead commodities should be concluded in the presence of four witnesses⁴⁹: the prevention of thefts and the apprehension of robbers were the primary benefits that resulted from this prudent regulation; but these were not the only good effects of which it was productive; by the necessary presence of four reputable persons at the making of every bargain, all disputes upon the nature and effect of simple contracts were in a great measure obviated, if not entirely removed.

When the litigated question was of an important and extensive nature, it was heard and determined in the Folcmote or County-court before the Eorl and the Bishop, and the collective body of the Freemen. The latter, in the earlier period of the Saxon jurisprudence, appear to have possessed and exercised an equal and undivided authority, something similar to that of the peers in the modern court of the Lord High Steward. They appear to have been in possession of a judicial capacity, which was afterwards confined, or rather delegated to twelve of their number, by the constitution of Edward the Confessor, enacted by the advice
of

of his Nobles, and framed after the Model of the criminal tribunal of Ethelred 5^o.

Causes of small importance were generally determined in the Courts of the Thain and the Centenarius; in the former they were ascertained by the wager of law, in the latter by the decision of fire and water. But when the spirit of equity exerted its superiority, when the cause or the parties were worthy of the interposition of a Jury, that select and impartial body were directed in all their determinations by the laws and customs of the realm; nor were they permitted to depart from the express rule under the specious but dangerous pretence of a liberal and equitable construction 5¹. An idea which can never be sufficiently reprobated, as subversive of the government of law, the pride and the happiness of a free and sensible nation. The baneful ingredients may be mingled in the honied cup by the hand of science, and recommended by the persuasive soothing of eloquence; but the effects of the venom will be equally certain and equally deleterious.

Such was the Saxon mode of distributing justice, and such the punishments that were inflicted; but the first (at least in many instances)

stances) was unhappily altered, whilst the last were deservedly subverted by the martial superstition of the Norman conquerors.

SECTION II.

IN perusing the history of the trial by combat we are presented with a train of heroes who were arrayed in arms of a new construction, who fought in a new manner, and acted upon new principles. A slight review of the origin of these variations may perhaps be admitted by way of illustration, though it may not be absolutely required by the nature of the subject.

A Roman army was composed of mercenaries of every nation without distinction.—The path of honour was open to all alike.—The hardy veteran relied with a just confidence upon the celebrity of his own achievements.—From the period that the task of collecting the revenues of the state was consigned to the Equestrian Order, the Roman Cavalry ceased to be regarded; it was in the ranks of the legions that
the

the young and the ambitious were inured to the perils and initiated in the science of war.

The defensive arms of the Roman legionaries were an helmet, a breast-plate, and a shield of large circumference; their weapons were the sword and the pilum; their evolutions were various, and their order, though freer and more flexible than the dense array of the Phalanx, was regular and well contrived.

The infantry of the Germans consisted principally of a naked and undisciplined rabble, who assailed the enemy with darts ⁵². The Nobility fought on horseback—when his strength was confirmed, the noble youth was introduced into the assembly, and invested with the shield and the lance; these he received from the hands of one of the chiefs, or of his father; and the ceremony was considered as the consecration of the warrior to the profession of arms and to the service of his country ⁵³.

The lance was a very different weapon from the Roman Pilum; the pilum was short, with a long and massy head; the lance exceeded it in length, but was lighter, and constructed with a thin and narrow but extremely sharp point ⁵⁴. The pilum was always emitted from

the hand ; the lance was generally retained and used in thrusting ; for as the knight was seldom provided with any other weapon, his rashness in parting with it would have exposed him a certain victim to the sword of his antagonist. Helmets and coats of mail were rarely worn, the German trusted to his shield for his defence ⁵⁵ ; it was diversified with gawdy colours, and was his only ornament ; to shake it in the face of the enemy was his pride, to lose it and survive the most indelible disgrace ⁵⁶ : coolness and circumspective valour were inculcated by the German custom, and it is worthy of observation, that an institution exactly similar in spirit and effect was established by the Spartan Legislator ⁵⁷. Amongst a people who are enthusiasts in war, the effects of fear are less to be dreaded than the impetuous exertions of temerity ⁵⁸. They found however by experience that their defensive armour was extremely defective ; they supplied themselves with casques and breast-plates from the spoils of the vanquished ; but the casques were open, as his shield was a sufficient defence for the face of the legionary ; the shields of the Germans on the contrary, who fought on horseback, were necessarily small,
and

and of consequence a great part of the body was exposed—they had recourse to compleat suits of steel, and to close helmets.

Here they were involved in another difficulty, when the Vizor of the Helmet was down, all personal distinction was at an end ; but this confusion was prevented by a very obvious method ; instead of the dawblings with which they had been before embellished without a meaning and without a form, the shields of the *nobility* were stained with discriminative symbols, which were assumed and appropriated by the respective bearers.

In a barbarous age, when the imitative arts were almost without a votary, these insignia were rude and plain ; hence it comes to pass that a coat of arms is esteemed by the heralds to approach the nearest to perfection when it is simple, and to recede the farthest from it when it is complicated and elaborate. A cross, a fess, and a bend are the most honourable, because they are the most ancient.

When the German Knight advanced to the combat he was followed by a valiant and active youth, who traced his steps and assisted him upon an emergency ⁵⁹. When a taste for pomp
was

was introduced with the observance of warlike punctilio, it became the duty of the faithful attendant to give and to receive defiance in the name of his lord, and to bear his escutcheon in the field and the council till the trumpets sounded, or the Orators proceeded to the arbitration of the sword.

The German horses were not sufficiently managed to preserve a regular order, much less were they practised in the complex evolutions of the Romans⁶⁰; these their impetuous riders disdained; couching their lances they rushed upon the foe in a violent but disorderly career; it was not the reciprocal charge of two contending armies, but the separate conflict of the individuals that composed them; the mutual support that constitutes the strength of a firm and united battalion was incompatible with their desultory array—the warrior depended upon his own valour.

The Lance continued to be the favourite weapon of the Knight to the extinction of the spirit of chivalry; he continued to single out his foe, and the conflict of the champions was terrible.

“ But

“ But she against him on the shield did smite
 “ With so fierce fury and great puissance,
 “ That thro’ his three-square’ scutcheon piercing
 quite,
 “ And thro’ his mailed hanberk, by mischance
 “ The wicked steel thro’ his left side did glance,
 “ Him so transfixed she before her bore
 “ Behind his croup, the length of all her lance,
 “ ’Till sadly groaning on the sandy shore
 “ He tumbled on an heap, and wallowed in
 his gore ⁶¹.”

Lucan forebore (however great the temptation) to imitate his predecessors in the single combats which they so frequently and so emphatically describe; the Roman discipline did not admit of them; Cæsar and Pompey, Antony and Brutus contending in single opposition would have excited the ridicule of the wits, and have sharpened the fangs of the critics. Tasso, on the other hand, has been as liberal of his duels as even Homer himself; and it must be confessed that in the latter instance as well as in the former the *costume* has been minutely attended to, and accurately preserved.

Consecrated to chivalry by the delivery of the lance and target, and afterwards by the invest-

investiture of the sword and spurs, attended by his squire, accoutred in the proper habiliments, and armed with the peculiar weapons of his order, the Knight ⁶² appeared with the same independent spirit, and acted with the same gallant reliance upon his own courage in a battle, a tournament, or a duel.

To a duel he was frequently summoned by the voice of the judge as well as by the impulse of his injured honour; let us see the origin of this extraordinary regulation.

We have been long accustomed to consider the decisions of justice as abstract positions derived from the reason of the case, the letter of the law, or the evidence of facts; but the notions of the Feudists were of a very different nature; they were ardent in the pursuit of military fame, and attached to the exercise of arms; but they despised learning, and dreaded the event that called forth the exertion of their mental faculties. The Lord, when he retired to his castle from the fatigues or the amusements of war, was neither qualified nor inclined to enter into the discussion of intricate and contradictory customs ⁶³; he threw away the balance but retained the sword; he decreed that the parties should determine

determine the dispute in single combat ; he concluded, and the conclusion was natural to the bigotted slave of superstition, that Heaven would benignly interpose, and invigorate the arm of innocent debility.

By this ingenious contrivance the Chieftain was relieved from the pain of thinking, and gratified with the din of arms ; whilst he preserved his authority unshaken, and received his compensations undiminished.

It has been said, “ that the trial by combat was the natural consequence of the law that established negative proofs ⁶⁴ ; that in the reign of Otho the Second the Italian lords were shocked at the perjuries occasioned by the latter ; that they reasoned deeply upon the subject, and fixed upon the decision of the sword as the best and most rational remedy ⁶⁵.” But might not the Lombards have imbibed the notion from the practice in France, where it was confessedly established in the reign of Lewis the Pious ⁶⁶ ? We are told, “ that the Salic law did not admit the negative proof, and therefore did not allow the trial by combat, in consequence of which it fell into disuse ⁶⁷ ;” but the Salic law was the most regarded in France, and perhaps the most

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extended

extended in its operation ; how happened it then to be subverted by the cure of a defect in the Ripuarian and Burgundian codes ? it was the warlike spirit that prevailed, nor was equity more stable than injustice ⁶⁸.

The kingdom of the Franks was of a very different construction from that of the Saxons ; the Franks preserved to the Romans a share of their ancient property ; the Saxons exterminated the Britons, and drove them to their rocks and fastnesses ; in France the Frank was the Soldier, and the Roman the Husbandman ; in England the Victors tilled the earth they had subdued : the martial fire was kept alive among the Franks ; but it languished among the Saxons : the court of Charlemagne was adorned with chivalry ; the residence of Alfred was dignified by learning : what was the consequence ? Though the negative proof was established in its fullest extent, the trial by battle was disdained, nor was it known to the Saxons in Britain till the day of their subjection to Norman tyranny.

So early as the beginning of the sixth century the adjudication by battle was established in Burgundy by Gundebald, the first of its dukes that bowed to the Francic yoke ; and from
thence

thence it advanced into the various independent principalities of the Feudal world. It was in vain that the Ecclesiastics remonstrated against the continuance of this pernicious and iniquitous custom; the pious emperor Lewis was deaf to the spirited representations of the sensible prelate Agobard ⁶⁹.

It was in the reign of Charlemagne and of his immediate successors that the combat was firmly rooted in France, in Italy and in Germany ⁷⁰; it was applicable at first to criminal accusations, but it soon expanded, and comprized not only the more serious, but the less important objects of civil litigation ⁷¹; issue was joined by the lance or the baton upon an imparlance, or upon the decision of an interlocutory question ⁷²; the judge descended from the bench, and vindicated his slighted authority upon the body of his contumacious vassal ⁷³; jarring testimonies were reconciled in the same summary manner; nor was it till after these preliminary skirmishes that the principal champions were brought into the lists to prosecute their presumptuous appeal to the God of Battles.

When William the Norman had fixed himself upon the English throne, he introduced by

degrees the military constitutions of his native country; he confirmed and extended the feudal establishment ⁷⁴; he instituted the trial by combat ⁷⁵. But it was with a slow and undermining hand that he subverted the bulwarks of Saxon liberty; he cajoled his subjects at the moment that he oppressed them ⁷⁶. When a man was accused of a crime he was indulged with the indiscriminate election of the Purgatory Oath, the Ordeal, and the Duel. If he fixed upon the latter he waged it in person or by his champion, as he was instigated by the ebullitions of valour, or restrained by the caution of pusillanimity ⁷⁷.

Compositions were discountenanced in the reign of the Conqueror, though they were not expressly prohibited. Wanton and unprovoked assaults were punished with the utmost severity, whilst death was the retribution of the murderer ⁷⁸. The earls Waltheof and Radulph who had conspired against the king, were the primary examples of that unrelenting severity which has ever been assumed by our monarchs in cases of inert and unsuccessful rebellion; they suffered decollation to the astonishment and intimidation of their humbled brethren ⁷⁹.

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The trial by Ordeal was also in a very languishing state, though it seems to have been practised at the express command of William Rufus for the purposes of the basest extortion. Fifty of the most opulent of his English subjects who had been accused by the king of destroying his game (a grievous and almost inexpressible offence in the eyes of a tyrant and a sportsman) were condemned to the Purgation of fire ; and, if we may believe the legend, they were rendered to their exulting friends uninjured and immaculate. But notwithstanding this miraculous event, the mode of adjudication continued to decline ; and dwindled in the space of a century into utter and merited oblivion ⁸⁰.

Compensations and the trial by jury were revived by Henry the First in his confirmation of the laws of Edward the Confessor ⁸¹ ; but the prevailing notions of the country were in direct opposition to these (as they were once esteemed) invaluable privileges ; nor was the king's popularity abridged when he explicitly ordained that the traitor ⁸², the murderer ⁸³, and the robber ⁸⁴, should be hanged ; or when he impliedly encouraged the military decision of civil and criminal disputes ⁸⁵.

The

The eleventh and the twelfth centuries may be justly esteemed the æra of intellectual darkness, and of its concomitants ferocity and superstition. The Roman learning had been long extinguished, the Grecian was confined within the walls of Constantinople, or the limits of its petty domain. Charles and Alfred were no more. A race of tyrants arose; the chase was their only amusement, and war their supreme felicity; they enacted the most rigorous laws for the preservation of the beasts of the forest, and lavished the lives of their subjects in the vainest and most chimerical pursuits. How horrible are the distresses of that country (exclaims a contemporary historian) whose sovereign is the tender preserver of noxious animals, and the sanguinary destroyer of his people ⁸⁶ !

As Gontran, king of France, was hunting on the banks of the Wosga, he perceived that a buffalo had been unlawfully destroyed; he was irritated at the prophanation of the royal and favourite game, and commanded the principal keeper of the forest to produce the offender or to answer for his crime. Reduced to this alarming dilemma, the keeper accused the chamberlain, and issue of battle was awarded.

The

The champion of the chamberlain and the keeper were equally matched, they contended for the victory till they both expired—Mercy in this emergence would have inclined the scale of justice in favour of the criminal; but this was not the genius of the forest laws, or of the princes that enforced them: the chamberlain was stoned to death, and three human beings were sacrificed to the manes of a buffalo ⁸⁷.

The instances of injustice and absurdity in consequence of the judicial combat are not so frequent or so striking in the annals of England, as in those of France. Though the combat was extended in the former country to accusations of treason and appeals of felony, it was softened by the concurrent efficacy of the trial by Jury, which began to revive in the reigns of the first Edwards, and to flourish with more than pristine vigour ⁸⁸.

By the common law, if treason had been committed beyond the seas, the charge was prosecuted in the court of the lord high constable; if within the realm, in parliament, or in the courts of criminal jurisdiction: the latter had also cognizance of appeals of felony, at the instigation of the injured party, and of his wife
or

or heir—the trial in all these cases was either by battle or by verdict ⁸⁹.

In civil litigations the custom was originally confined to the determination of the absolute property of a freehold in a writ of right; it was afterwards rendered still less extensive by the invention of the Grand Assize; a tribunal composed of four knights, and twelve esquires; advised and projected by Glanville, as a salutary alternative to the prevailing mode of trial; a partial though not an effectual remedy for a grievous, but, at that period, an incurable evil ⁹⁰.

Upon an accusation of treason the lord high constable ⁹¹, after hearing the complaint of the appellant and the plea of the defendant, appointed the day of battle, assigned their weapons to the combatants, and received pledges for their appearance at the appointed time in the proper array, and with the gallant demeanor of noble and honourable knights, or with the sader weapons and the humbler deportment of good and legal men ⁹². They were also strictly enjoined to refrain from reciprocal reproaches, or assaults, and to prohibit their friends and adherents from the like transgressions during the

the awful interval between the judicial award and the actual commencement of the combat.

The lists were prepared of a proper height and dimensions with convenient apertures; the ground of the field was levelled; and the Constable, attended by his proper officers, compelled order and preserved regularity. Upon the day of battle, when the King had ascended his chair of state, and the Constable and Mareshall had taken their places at his feet, the pledges of the combatants were produced and detained as prisoners till they were emancipated by the appearance of their principals. At the arrival of the appellant at the eastern postern of the lists, he was interrogated by the Constable with respect to his appellation, the cause of his approach, and the propriety of his arms; and afterwards conducted with great solemnity and decorum to the tent that was prepared for his reception. The defendant was received in a similar manner at the western postern, he was questioned with the same precision, and accommodated with the same conveniencies.

The Constable and the Mareshall proceeded in the next place to examine into the quality, the form, and the number of their weapons,

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to prevent undue advantages and the infringement of the law of arms. The contending parties (after the celebration of mass) attested upon oath the truth of their respective assertions; they also declared that they were unprovided with spells or charms of any description or composition, and that they confided in the justice of their cause, and not in the assistance of infernal agents; and lastly, they severally swore to exert their utmost abilities in support of their solemn and contradictory asseverations.

Silence was then proclaimed, and the spectators were prohibited from approaching within four feet of the lists; which were cleared of all persons except the Constable and Marshall, their deputies, and two knights clad in compleat armour, but without any offensive weapons, who appeared as the friends of the respective champions ⁹³. The heralds and the pursuivants attended at a convenient distance; the combatants were then conducted into the lists, and expected the commands of the Constable, who three times reiterated with a distinct and sonorous voice "Let them join the battle in the name of God ⁹⁴."

During

During the combat they were not permitted to rest or to take any refreshment, but by the express direction of the King; and upon his interference the Constable was extremely accurate in his survey of their situation at the time of their desisting, that they might be placed in the same position at the renewal of the combat.

If the contest was concluded without a mortal blow by the recreancy of either of the parties, the arms of the culprit were instantly stripped from his body and broken before his eyes; he was then drawn to the place of execution at his horse's heels, and hanged and quartered with every circumstance of obloquy and disgrace. It was lawful however in every instance for the King to stay the fight, and to assume the determination of the cause ⁹⁵ by a civil adjudication ⁹⁶.

In a combat awarded upon a civil action, the champions of the parties, whether knights or yeomen, were armed with the target and baton ⁹⁷; whereas in France the latter were invariably the weapons of the villein, whilst the lance and the sword were as constantly wielded by the knight ⁹⁸. It was in the year 1260, and in the reign of St. Lewis, that the

trial by battle was abolished in the royal demesne of France, though it survived in the Baronial territories, till they were consolidated with that body of which they had formerly been the members ⁹⁹. In England the right of real property may be decided in the field at this very day ; but for the honour of our country we must observe, that though the legislature has denied its interference, reflection and humanity have interposed ; and if the lapse of two centuries without an example may be said to operate as an abrogation, the judicial combat may be accounted a non-existent in form as well as in reality ¹⁰⁰.

As the Knight was liable to be called into the field in the midst of a profound peace, it behoved him to retain the habits of war, and to preserve that hardiness and agility which were so eminently required by his manner of fighting, and by the nature of his arms : it is from this necessity that we must derive the origin of tournaments ¹⁰¹, a species of the *Lusus Trojæ*, but of a more robust and violent nature : valour as well as skill was requisite, wounds and fractures were the ordinary consequences, and death itself the not unfrequent lot of the rash,

rash, the weak, and the unskilful ¹⁰². But it was by these adventurous preludes, that the knight was prepared for the exertions of valour and of prowess which history has confirmed, romance exaggerated, and poetry adorned. The exploits of Godfrey of Bulloign are equally surprizing in the grave recital of Matthew Paris, and in the animated flow of the Jerusalem : we must reflect however that Tasso was a poet, and Paris a monk, and that Godfrey was the hero of a poem and the leader of a crusade ¹⁰³, ¹⁰⁴.

When the manners of mankind were comparatively polished, the fury of the tournament abated, instead of a warlike exercise it became an elegant amusement, the running at the ring was introduced, and the contest of the combatants was restrained to the shivering of their lances ¹⁰⁵ ; a Tournament became as innoxious as a *Mischianza*, and like the latter it was frequently a gawdy substitution of idle parade for actual alertness, of empty bravado for effectual enterprize ¹⁰⁶.

When we peruse the constitutions of our ancestors that regard the judicial combat, we are presented with an heterogeneous mixture of prudent regulation and ridiculous precaution.

In

In an appeal to heaven, when virtue assumed the steadiness of valour, and innocence the efficacy of strength, they dreaded the machinations of the infernal spirit, and the arts of his itinerantimps; they sought by the alliance of human foresight to invigorate the arm of omnipotence, to establish its particular decrees, and to render its justice effectual.

It is with mingled wonder and contempt that we reflect upon the various modes of superstition that have sprung from the womb of ignorance, and have been fostered by the policy of Rome. The Saxon confided in the infallible declaration of the holy water or the consecrated bread: the Norman was equally attached to the more manly criterion of the sword; they dwelt with enthusiastic pleasure on the legendary descriptions of iniquity detected and innocence triumphant; and if the Saxon produced his Emma, he was answered by the Norman with Gunhilda ¹⁰⁷.

The impressions of prejudice are deeply engraven in the minds of men; though the finer strokes are effaced by the hand of time, the leading traits will still be predominant: a species of the Ordeal has been transmitted through
many

many generations of the rude and the illiterate, and has exacted a ready obedience from the tumultuous disposition of the vulgar ; it is to the barbarous test of witchcraft that I allude, in which the ignorant in general confide, which the brutal have frequently practised, which the judicial authority has not always condemned ¹⁰⁸.

The laws of modern honour have been ingeniously and accurately deduced from the forms of the judicial combat ¹⁰⁹ ; the modern duel is the consequence of those laws, which have been so long and so firmly established by the consent of the European world ; that we can never expect their abrogation but by the gentle interference of apostolic simplicity of speech and primitive rectitude of manners.

A DIS.

any person or persons who shall be
found guilty of a felony or misdemeanor
shall be liable to the same punishment
as if he or she were a natural person.
The law of master and servant shall be
in force in this State, and the master
shall be liable for the acts of his
servant in the same manner as if he
were a natural person. The law of
master and servant shall be in force
in this State, and the master shall
be liable for the acts of his servant
in the same manner as if he were
a natural person. The law of master
and servant shall be in force in this
State, and the master shall be liable
for the acts of his servant in the
same manner as if he were a natural
person.

A
DISSERTATION
ON THE
NATIONAL ASSEMBLIES
UNDER THE
SAXON AND NORMAN
GOVERNMENTS.

AN investigation of the *Constitution* of Parliament must ever be interesting to an Englishman, his passions will be awakened, and his attention will be engaged; he will feel the privileges it secures, and the importance it confers; he will glow with the consciousness of freedom, he will be satisfied with its extent, and jealous of its infringement.

Researches respecting the *Origin* of the national Convention can never be received with the same complacency. Content with the enjoyment, we are indifferent about the title. Flattered by long possession, we dread the discovery

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covery of the grounds upon which it is founded, or the means by which it was obtained. But nothing can be vainer than our apprehensions; liberty cannot be usurped, because it is our right; it cannot arise from innovation, because it is inherent.

To give additional strength to our political claims by a series of historical deductions, or critical researches, would be an unnecessary labour, they are too well established by reason, to seek the confirmation of precedent. But it is surely a pleasing, if not an instructive task to delineate them in their original roughness, to mark their progress to refinement, the checks that they received, and the dangers that they surmounted: oppressed by the open assaults of feudal tyranny, and the covert machinations of speculative despotism they had almost sunk in annihilation; supported by justice they arose from depression with recruited vigour and renovated lustre.

The right of popular representation originated from the corruption of a system peculiarly inimical to the liberty of the people; it was not conferred as a favour upon those who were elected, but granted as a franchise to those who
were

were excluded; it was applied to the noblest as well as the most interesting purposes by the wisdom and by the virtue of our more immediate ancestors.

That the people at large, beneath the benevolent sway of the Saxon monarchs, had by no means an inconsiderable share in the administration of a mild and equal government, is a flattering and indeed a probable opinion.—To elucidate this principle is the primary tendency of the succeeding disquisitions.

When the conquerors of the western provinces of the Roman empire elected their kings or admitted an hereditary succession, they retained a controuling power, the authority of the sovereign was limited, the rights of the people were established, maintained, and vindicated. It was for these purposes, and for the general task of legislation, that the convention of the states was adopted by the Franks, the Goths, the Lombards, and the Saxons.

Nothing can be more erroneous than the opinion that the general assemblies in their genuine and original purity were composed entirely of the feudal vassals ¹. At the establishment of the fiefs in England, as well as in France, the

allodial property was extensively diffused, and of the freest and most independent nature. It is true that the immediate vassals in the advanced state of the feudal government assumed a decided superiority; but at that period the allodia were depreciated, and almost extinct ². The military tenants were considered as the proper advisers of a warlike monarch, the humbled focmen and the insignificant liberi, secure from oppression, were treated with contempt.

The assembly of the states was probably established in France at the settlement of the Francic monarchy. When it assumed the name of Parliament under Pepin Maire of the palace, it consisted, says Du Haillan, of the King, the great nobles of the realm, the principal dignitaries of the church, and the most honourable leaders of the people ³. It was annually consulted by the princes of the Merovingian race ⁴; but much more frequently under the wise and vigorous administration of the immediate successors of Charlemagne. In a capitulary of Charles the Bald we meet with this remarkable expression, “Lex consensu populi fit & constitutione Regis ⁵.”

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The undeviating institution of the German conquerors was established by the Saxons in Britain. The expeditions and the ordinances of their provincial monarchs were undertaken and adopted with the consent of the territorial council. We find not a single instance of an arbitrary constitution, however benevolent or salutary. It was not in the exaction of unnecessary imposts, or the gratifications of a revengeful spirit, that the princes of the heptarchy abused their delegated power ⁶.

The Saxons were strangers to the *name* of Parliament, it is not discovered in the whole body of their law; we search for it in vain in the Monkish records. The St. Edmund's-bury manuscript transcribed by Sir Edward Coke ⁷, and supposed to be of the age of Hardicanute, is proved, by the strongest internal evidence, to be in reality of a much later original. It was evidently fabricated by the abbot and his brethren, to confer additional dignity upon their convent, by rendering its exemption from episcopal jurisdiction coeval with the date of its foundation ⁸.

The term Mote or Gemote was applied by the Saxons to their several conventions; the
princi-

principal or national assembly received the emphatical denominations of Mycel Gemot, the Great Council, and Wittena Gemot, the Council of the Wise Men 9. The laws before the Conquest are said to be enacted by the King with the advice and consent of his prelates, sages, and elders ¹⁰. In a few instances the expression is varied; it is never definite with respect to the laity, but the several orders of ecclesiastics are in general enumerated.

It is not from the preamble of the law that we are to obtain a knowledge of the number and the rank of the legislators; we are informed of these circumstances with a degree of precision by the signatures with which it is concluded. It was the general custom in those ages for the principal members of the assembly to authenticate their acts by a formal subscription; ¹¹ it continued to be the custom under the Norman princes, and Magna Charta is the last instrument of supreme authority that appears with this confirmation.

Ethelred King of England, with the consent of his council, expelled the secular clergy from Christ Church at Canterbury, and granted it to the Augustine monks, with considerable augmenta-

mentations. The act is still extant in the original, with the names and the additions of the heads of the assembly: as they retain their native descriptions, a survey of the list will prove of considerable efficacy in elucidating the distinct characters of the legislative body of the Saxon constitution ¹².

The King affixes his signature in the first instance, and is followed by the episcopal order, who established themselves, in the direction of the civil, as well as of the spiritual government, from the period of their introduction by Ethelbert. They were in possession of Fiefs, and exercised the right of territorial judicature ¹³. They were distinguished by peculiar privileges and immunities ¹⁴. They maintained a concurrent jurisdiction with the Eorl in the meetings of the province ¹⁵, and assumed a consequential pre-eminence in those of the nation ¹⁶.

The first of the temporal nobility are the Ealdormen, or Eorls, for such they really were, though they are not unfrequently translated Dukes ¹⁷. But the Dukes, or Heretochs, as their names imply ¹⁸, were strictly considered as military officers; they had no place in the Folcmote, or in any of the Placita, either judicial

dicial or legislative; but were annually elected by the freemen, as their leaders in the field ¹⁹. The Gerafa was originally stiled the Ealdorman as a respectful appellation; when the Danes possessed a division of the kingdom, he received the title of Eorl, which distinguished the governors of the Danish provinces ²⁰. These several denominations have occasioned innumerable mistakes, the Eorl has been confounded with the Heretoch, and distinguished from the Gerafa; nay so vague were the expressions of the monkish compilers and translators, that the Conqueror is described by one as Duke ²¹, by a second as Marquis ²², and by a third as Earl of Normandy ²³.

It is said that every degree of rank and dignity, except that of Thain, is included in the word Ealdorman ²⁴. I conceive the general rule to subsist, in many instances, without the exception. In the preamble the Ealdormen alone are generally mentioned, and the law is afterwards subscribed by several of the Thains. The term Ealdorman had probably a double signification; in some instances it was indefinitely applied to the eminent personages of the great council,
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and in others it was expressly confined to the governors of the shires.

The Thains who succeeded the Eorls in their signatures were the great vassals of the realm; as such they performed the military service, enjoyed the judicial power, and attended the national convention ²⁵. The immediate tenants of the crown preserved a regular agreement in these several services or franchises; they may be deemed the discriminative marks of their dignity and subordination; as well as their inseparable attributes in the different constitutions of the feudal kingdoms ²⁶.

The principal officers of the King's household were admitted to seats with the military vassals ²⁷. It is possible, that (like the tenure in Grand Serjeantry at a later period) ²⁸ the claim was annexed to their posts; it is more probable that it was derived from the Fiefs or Boclande of which they were undoubtedly possessed.

The Folcmote or provincial synod was evidently composed of the dependents upon the Eorl; the feudal tenants, whether Thains or Theodens were subject to the arbitrary controul of the Seignoral jurisdiction; the Folcmote was the general resort of the humble, but spirited

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Allodiarii

Allodiarii ²⁹. The Bishop and the Eorl presided in its monthly conventions ³⁰, and determined ecclesiastical as well as civil causes ³¹. It was by this respectable assembly that the Eorls or Ealdormen were elected ³²; and their delegated power was of a very transcendent nature; in their judicial capacity they were considered as the interpreters of the law ³³, whilst they sat as legislators in the great council, and possessed a principal rank among its temporal members ³⁴, ³⁵.

It is natural to suppose that the Eorls thus constituted and thus connected, imbibed a considerable portion of the popular and independent spirit that animated their electors. It is true that the upright administration of justice was the great object of the people's expectation, they pretended not to controul their annual governors in the exercise of their legislative power, but they retained the right of censuring or of approving their conduct by electing or rejecting them the succeeding year. The Eorls were esteemed the general conservators of the liberties of the realm, and the peculiar representatives of the freemen. In the senate their duty was tribunitian; they observed the motions

tions of the monarch and his vassals, they opposed the exertions of arrogated prerogative, and their opposition was rarely ineffectual.

From this description of the authority and the duty of the Eorl, we might suppose at a cursory glance, that the political liberty of the people was by no means depreciated. But upon a more accurate inspection we may perceive some latent defects in this specious but imperfect constitution. The Eorls were elected from among the first and the greatest in the realm; they were possessed of Fiefs, and were of course, in some degree subservient to the crown. They were liable to the perils of the military service, and cannot be supposed to have been extremely solicitous in alleviating the subsidiary contributions which the freemen were compelled to raise as the price of their exemption ³⁶. The tie between the Eorls and their electors was of a loose and negligent texture; it wanted the involution of parts, and happy combination of interests which alone could render it substantial and efficient.

But when we allow a degree of imbecility to the Saxon constitution, we must guard against the idea of its total inefficacy. We must re-

flect that the military vassals were by no means arrived at those extremes of pride and subjection, that rendered them the tyrants of their fellow-subjects, and the slaves of their leige lord. It was not till the Norman establishment that the tenants of the crown were separated from the mass of the people. Beneath the Saxon government their interests, though not always the same, were seldom in opposition. Under the succeeding administration, the nobles, increased in their number and their opulence, despised the inconsiderable freemen, and affected the haughty deportment of independent sovereignty.

The Saxon Thains as well as the dignitaries of the church possessed the right of territorial jurisdiction; but it was unattended with the military parade that accompanied the Norman Baron ³⁷. The Thain in his manerial district administered justice to his dependents, whilst in the capacity of Eorl he presided in the Folcmote as president of the freemen of the shire. Connected by these distinct obligations he was deaf to the insinuations of pique and jealousy; and tho' he might sometimes prefer the interest of his order to that of his electors, he
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was in general peculiarly attentive to the protection of their property and their franchises.

That the Eorls were considered as in some degree the deputies of the people may be inferred from the analogy of the Gothic constitutions. The representatives of the Allodiarii are allowed to have been admitted in the ancient parliaments of France ³⁸. They are distinguished by the various descriptions of the advocates ³⁹, the count's commissioners ⁴⁰, and the deputies of the provinces ⁴¹; but they are every where described as constituting the third estate with the spiritual and temporal nobility.

Upon the whole we may venture to conclude that the people elected their protectors who assumed a just pre-eminence in the great assembly of the nation; and that their political rights were by no means compressed by the regal prerogative, or overwhelmed by the weight of aristocratical importance. The opinions of the philosophers of Greece were propagated by the swords of the northern conquerors; impatient of oppression they felt the necessity of freedom: undirected by systematical arrangements the exertions of virtue were instinctive. The congenial spirit of liberty delighted in the German forests,

forests, and consecrated the rocks of Scandinavia; it expanded in the uncultivated waste, where nothing was constrained, where nature herself was independent.

It may be dangerous, or at least inconvenient, for the people to exert the prerogative of electing their supreme magistrate under every species of government, and at every period of society. But when the right of resistance is admitted, and it is blended with the essence of civil liberty, the popular original of the executive power can never be disputed. That the King was elective was a fundamental maxim of the feudal constitution; the choice in some instances was free, in others it was restricted. In Germany and in Poland the ambitious noble might aspire without guilt to the regal dignity: in France and in England it was generally, though not always confined to the royal blood. But in no instance did the crown descend in a regular and limited succession; it was not assumed by the Sovereign as the gift of heaven, but received with gratitude from the hands of the people ⁴².

The instances in the history of our own country of the elections and confirmations of the

the Wittena Gemot are equally numerous and notorious: I shall point out the most remarkable.

Edwy King of England offended the regular ecclesiastics by the disgrace of the famous Dunstan the patron of their order. The revengeful and insidious monks fomented an insurrection in Mercia. The insurgents dispossessed the King of that division of the realm, and elected his brother Edgar for their sovereign 43.

Upon the death of Hardicanute, Edward the son of Ethelred the Second was chosen King by the general assembly, in preference of another Edward the son of Edmund Ironside, and grandson of Ethelred 44.

Nor was the title of Edward the Outlaw acknowledged at the decease of the Confessor; in the person of Edgar Atheling it was again neglected. Harold the son of Godwin, a nobleman of distinguished abilities, but a stranger to the blood of the Saxon monarchs, was called to the succession by the unanimous voice of the Wittena Gemot, and crowned with the usual solemnities, on the day succeeding his election 45.

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It was in this high prerogative that the rights of the subject were peculiarly manifested and exerted; nor did the Conqueror disdain to accommodate himself to the favourite and popular opinions. He forgot, or appeared to forget, that the kingdom was already at his disposal; he condescended to meet the delegates of the people who requested his acceptance of the crown; he hesitated, he doubted—and yielded to their intreaties ⁴⁶.

It has been already observed that the interior policy of the realm was regulated, and the civil and criminal code amended and explained in the great convention of the people ⁴⁷. It was in this assembly that the defence of the kingdom was consulted and the expediency of taxes debated.

A numerous and well appointed fleet is justly esteemed the natural armament of our island; and in the days of freedom it has ever been cherished and supported. It was by improving his marine that Edgar the Peaceful preserved his dominions from insult, protected the commerce of his subjects, and purchased for himself the noblest of nominal distinctions. Nor were the sages of the nation insensible of
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the security that attended a formidable navy; they concurred with the wise Alfred in providing for its establishment 48.

Ina King of Wessex entrusted his relation Ethelard with the reins of government, and travelled in pilgrimage to Rome. It was the policy of the Roman pontiffs to embrace their dutiful children with the most affectionate cordiality, and the humility of the venerable Zacharias was amply rewarded by the grateful monarch. In a paroxysm of devotion, he professed himself the vassal of St. Peter, and subjected his kingdom to a subsidiary contribution. The payment of a penny, most probably of silver, was charged upon every house, and appropriated to the church by a free and charitable donation 49.

Upon Ina's return to England the grant was allowed and ratified by the *national assembly* 50. But the King's devotion was insatiable, he again indulged himself in an Italian excursion; he submitted to the tonsure and expired in a Roman convent, the macerated victim of severity and mortification 51.

The grant of Romescot was adopted by Offa in Mercia, and became the general custom

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of the realm ⁵². By the law of Edgar if the oblation of St. Peter's penny was delayed beyond the anniversary of his feast, the offender was enjoined to render it thirty-fold at Rome, and to pay an hundred and twenty shillings to the King upon his return to England. For the second offence he made a similar attornment to the Pope, but the fine to the King was augmented to two hundred shillings. For the third offence he forfeited his goods and chattels ⁵³. But the severity of this ordinance was alleviated by Canute, who reduced the penalty to the simple payment of twenty pence to the Bishop, and of fifty shillings to the King. These different constitutions were framed and established with the consent of the general assembly; so rapid were the advances of papal bigotry! ⁵⁴.

In the reign of Ethelred the second, the kingdom was miserably harassed by the Danish depredations; the usual military resources were inadequate to its defence; and the King in this extremity had recourse to an extraordinary method of recruiting his exhausted strength ⁵⁵; with the consent of his council, he levied an annual tax of two shillings upon every hide
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of land for the support of the mercenaries who were stationed on the coast. The Danegeld became an established burthen upon the subject, and was exacted by the Danish, as well as by the Saxon and Norman monarchs. The short interval of its cessation originated from a reverie of the superstitious Edward; when the produce of the tax was one day heaped upon a table, the King declared, with the symptoms of convulsive terror, that the devil was dancing on the unhallowed gold, and his self-conviction was strongly evinced by his refunding what had been collected, and by his prohibiting the continuance of the imposition ⁵⁶.

The attention of the Wittena Gemot was by no means confined to temporal affairs. The Bishops established themselves in the provincial synods upon the introduction of their order ⁵⁷, and the correction of spiritual abuses was a branch of the jurisdiction of the Folcmote. Their appearance in the national assembly was attended with similar consequences. The foundation of monasteries, the endowment of fees, the regulation of enormous abuses in the discipline of the church were provided for and reformed in that venerable convention.

Oswald the Bishop expelled the married secular priests, and established the regulars in the convent at Worcester. Edgar King of England, with the advice and consent of his council, confirmed the ordinance, and invested the monks with ample privileges ⁵⁸. The charter of the abbey of Westminster was granted, in like manner, by Edward the Confessor, and authenticated by the signatures of the Bishops, the Eorls, and the Thains ⁵⁹.

The right of judicature in civil and criminal cases was exercised by the Wittena Gemot; but it is impossible to define with precision, the extent, or the mode of its jurisdiction. It is probable that causes of the highest importance from the intricacy of the question, or the dignity of the parties, were debated and decided with this extraordinary solemnity. The doctrine of appeal was seldom applied, if indeed it was at all acknowledged, in the system of Saxon jurisprudence.

Cenedrytha, the daughter of Cænulf King of Mercia, was called upon by Wulfred the Archbishop in the provincial council, for restitution of the lands which her father had illegally detained. The justice of the primate's claim

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was so clear and unequivocal, that the assembly unanimously decreed in opposition to the Princess⁶⁰.

In the reign of Ethelred, the Bishop of Winchester recovered an estate by a similar determination of the supreme court⁶¹.

Godwin and his sons were accused of treasonable practices, and were summoned by Edward the Confessor to appear in the Wittena Gemot, to manifest their innocence, or to answer for their offences. Oppressed with the weight of guilt they declined the enquiry, and were banished for their contempt. But a charge of a still darker nature was afterwards preferred against the Earl; he repaired to the assembly, and seems to have owed his acquittal of the imputed murder to the fears and not to the justice of his judges⁶².

From what has been said, it must be candidly allowed that the national assembly of our Saxon ancestors asserted the right of electing its supreme magistrate. That it possessed the legislative, the judicial, and the fiscal powers. And that the people had a considerable share in the direction of its councils, and the confirmation of its decrees.

SECTION

SECTION II.

THE Norman conquest is the era from whence we justly date the perfection and the corruption of the feudal establishment. No sooner had this celebrated constitution attained the maturity of its vigour, than it began to languish in its decline. It was incorporated with the civil government, it strengthened it and dissolved it. The power of the Barons, whilst it protected the kingdom, invaded the regal dignity.

The Normans had adopted the manners and the institutions of their Francic neighbours⁶³. The allodia in France were no longer visible. The counties in the age of Charles the Bald became hereditary; they were now converted into fiefs⁶⁴. The civil jurisdiction of the Counts and the military command of the Dukes were blended and united. The nobles, directed by feudal maxims and bound by feudal obligations, professed themselves the vassals of the crown, they slighted its authority, and despised its power.

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The freemen were permitted at a very early period to perform the service of the military tenants, and to possess at the same instant allodial and feudal property ⁶⁵. They fought by proxy in the provincial militia and attended their lords in person ⁶⁶. The allodia by a regular gradation were separated from the Count's domain, they were subjected by the freemen to the King, or held of his vassals ⁶⁷, they were confounded with the fiefs, from which they were no longer to be distinguished ⁶⁸.

The government in France from the reign of Louis the Pious assumed a feudal form; the power of the Barons was exalted, whilst that of the King was depressed; nor was the feeble remnant of the race of Charles superior in dignity or in consequence to the degenerate descendants of Meroveus. The aspiring Capet, possessed of extensive territories and accumulated honours, was elevated to the throne; he was obeyed in his own demesnes and respected in the district of his vassals ⁶⁹.

It was in the reign of Philip, the third in descent from this great monarch, that the Normans invaded England ⁷⁰; they introduced

duced the complicated refinements of the feuds, and subverted the shattered bulwarks of popular independence.

By an attentive perusal of the laws of the Conqueror and of his son Henry we may discover four distinct species of property and four progressive ranks of tenants in the constitution of a Norman county.

I. The counties, when the allodia were extinguished, were considered as pure and legitimate fiefs ⁷¹, the Counts received them of the King as hereditary benefices, instead of annual honours ⁷², they rendered the relief ⁷³, and performed the military service ⁷⁴.

II. The counties were sub-divided into manors, of which there were many that were exempt from the Count's supremacy ⁷⁵. Under the Saxon government the fiefs were distinguished from the presidency of the Earl ⁷⁶; and so strong was the prevalence of custom, assisted by political considerations ⁷⁷, that they retained their original independence beneath the Norman establishment. These peculiar districts were granted by the crown to the dignitaries of the church ⁷⁸, and to the temporal

Barons

Barons ⁷⁹, they held in chivalry, they exercised the signoral jurisdiction ⁸⁰, and were considered as Peers in the national assembly ⁸¹.

III. But there was a third description of vassals, who appear in a subordinate capacity. The Counts and Barons in their respective counties and honours retained a sufficient portion of demesne, and granted the superfluous manors to their faithful and warlike dependants ⁸². The rear fiefs were held by the Vavassours of the mesne lords; their tenure was military ⁸³, and the connection was confirmed by the solemn engagements of homage and the oath of fealty ⁸⁴.

IV. The last in the list of freemen were the scanty and despised remains of the Saxon socmen. The trifling possessions which they still retained, were held by the performance of certain free though peaceful services, incidental to the Fraunkesferme tenure. The Count had been the governor of the Folclande in the days of its allodial simplicity, when it received the feudal stamp, he was considered as the Lord of the socage farms, as well as of the military fees ⁸⁵.

In the foregoing description of the several classes of the freemen, the military tenants in chief assume a just pre-eminence. The socage tenures were few and inconsiderable ⁸⁶. The Vavassours were numerous and powerful, but it was to their immediate Lords, that they dedicated their services ⁸⁷. The Counts and Barons derived their fiefs from the crown, they vindicated its honour with their swords, and resisted its usurpations in their assemblies.

The great council of the nation received a correspondent form with the novel constitution of the Normans ⁸⁸. The sages and elders of the people are no longer discovered in the preambles of laws and charters, these venerable terms were exchanged in the public acts for the comprehensive description of the Barons ⁸⁹; whilst the private grants, that flowed from the King's bounty, were confirmed by the assembled Peers ⁹⁰. The cotemporary historians delineate the customs in the language of the age; the titles of proceres & magnates are given to the parliamentary vassals; they are generally described as the heads of the church and of the fiefs, and more particularly as the Prelates, Counts, and Barons ⁹¹.

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The episcopal senators had a double claim to an establishment in the Wittena Gemot. As holders of fiefs they possessed the franchises of the Thains ⁹². As heads of the hierarchy they exercised the privilege of advising and dictating the canons and the endowments of the church. Under the Norman government, the conduct of ecclesiastical affairs was committed to the provincial synods of the Bishops, and controuled by the supreme authority of the general council of the mitred dignitaries ⁹³. The spiritual and civil jurisdictions were no longer united; the Bishop was dismissed from the Shiremute, and causes *pro salute animæ* were reserved for his peculiar cognizance ⁹⁴. It was as a feudal baron that he exercised the right of criminal justice ⁹⁵, it was by the same title that he claimed his seat in Parliament ⁹⁶.

In imitation of the estates in France ⁹⁷, the conference of the King with his nobles received the emphatical appellation of the Parliament ⁹⁸. The term became vernacular at an early period of the Norman age; and the united authorities of our antiquaries and historians may be produced as evidence of the

mode of its constitution and the supremacy of its decrees 99.

As the principles of the parliamentary system in its strictly feudal state are simple and uncontroverted, I shall content myself with briefly stating, 1. The number and rank of its members, and, 2. Their legislative and political authority.

I. In the reign of William the Conqueror the number of the tenants in capite who sat in parliament was about seven hundred ¹⁰⁰; it was augmented under the succeeding princes by the deaths and forfeitures of the favourites of the crown and the division of their fiefs ¹⁰¹. The appearance of the Prelates, Earls, and Barons has been already explained; but we sometimes meet with the name of a Viscount and always with a long list of the officers of the crown. The Norman Viscounts were elected by the vassals of the Earls, for whom they presided in the Shire-mote ¹⁰²; but in some particular instances they were appointed by the King, and considered as the hereditary lords of such counties as were unprovided with governors; and when this was the case, they assumed the prerogative of their fiefs ¹⁰³. The state
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officers who were laymen, were certainly possessed of fiefs ; nor can we doubt that the King's Chancellor and Chaplains received the rewards of their piety in an age, when the efficacy of prayer was so highly estimated, and so dearly purchased ¹⁰⁴.

II. The Parliament, it has already been observed, possessed not the direction of spiritual affairs. Its judicial authority, though not abolished, was at least encroached upon by the novel constitution of the *Aula Regis* ; whilst the almost unlimited power of the judiciary was exerted and abused in the civil, the criminal, and the fiscal courts ¹⁰⁵. But its legislative and political rights were perfectly unimpeached. The royal grants were ratified and confirmed by the assent of the Peers ¹⁰⁶. The King applied for their counsel, and accepted of their supplies ¹⁰⁷. Nor is it in vain that we seek for examples of their disposing of the crown, by regulating the succession ¹⁰⁸.

Such was the constitution of Parliament from the Norman conquest to the decease of the first Richard. For more than the space of a century, the power of the vassals was gradually increasing, whilst that of the crown declined in
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a just proportion. The feudal constitution revolted from its primitive simplicity ; the complicated machine was clogged by refinement ; the tenants of the Barons, by infeoffing their dependants, increased the power of their Lords, but rendered the operations of the militia at once inert and desultory. The military service was commuted, and the escuage was improperly applied. Reliefs and aids were frequently demanded, and sometimes refused. The sparks of jealousy and ambition which had long been smothered, were fanned by the arts of Rome and blazed in civil dissensions. But while the Barons contended for their privileges, they indulged themselves in the luxury of oppression ; they drained the Vavassours by accumulated exactions, and imitated the tyranny they resisted. The socage and burgage tenants, insignificant as they were, preserved a degree of obscure independence. But the largest division of the people, the miserable villains, were subject to the unbounded licentiousness and barbarous caprice of their haughty and unfeeling lords ¹⁰⁹.

The Barons were originally summoned by writs under the great seal, directed to each individual.

dividual. But the reign of John produced a new regulation. In the Magna Charta of the seventeenth year of that prince, we find the following article : “ Et ad habendum commune
 “ consilium regni de auxilio assidendo, aliter
 “ quam in casibus prædictis, vel de scutagio
 “ assidendo, summoneri faciemus Archiepisco-
 “ pos, Episcopos, Abbates, Comites, Barones
 “ sigillatim per litteras nostras; & præterea
 “ faciemus summoneri in generali per viceco-
 “ mites & ballivos nostros, omnes illos qui de
 “ nobis tenent in capite ¹¹⁰.” It is our present task to draw the line of separation between the greater and the lesser vassals as they are distinguished in this constitution.

The socage lands, it has already been observed, were held of the Earl in the reign of the Conqueror, and of his immediate successors. But the minute fiefs, and fragments of fiefs, that fell to the crown by escheat, were sometimes, and that at an early period, converted into free lands, and held of the King in chief ¹¹¹. Of this we are certain, that in the reign of King John there were socage vassals, who were considered as holding in capite ¹¹², and were
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subject to primer seifins, as well as their military brethren ¹¹³.

That the intention of the statute comprehended the socage tenants in capite, is too evident to admit of a controversy.

The establishment of guilds and boroughs is of great antiquity ¹¹⁴. The customs and the immunities of London are confirmed by a charter of King Alfred ¹¹⁵. The privileges of the cities and boroughs with respect to markets, fairs, tolls, and jurisdictions may be collected by a perusal of the Saxon laws. Upon the arrival of the Normans, the several corporations of the realm received their charters from the King, under the express condition of rendering certain services of a free and definite nature.

That Burgage was a tenure in capite may be proved by the testimony of Littleton. “Tenure in Burgage est, lou ancient Burgh est, “de que le Roy est seigneur——et tiel tenure “nest forsque tenure in socage ¹¹⁶.” Madox has laboured the point with skill and accuracy ¹¹⁷; but it is rendered indisputable by the decisive authority of Magna Charta, which expressly declares that the Burgage tenures were held of the King ¹¹⁸.

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Sir Edward Coke indeed has pronounced that Burgage was no tenure in capite, and that the King in consequence was not intitled to Primer Seifins ¹¹⁹. It is confessed that renders of this nature were never demanded; and the reasons are as convincing as they are evident. The corporation, to which the land was granted, was permanent in its nature, it rendered the annual and certain services, but was incapable of contingencies. A corporation, it will surely be allowed, was deficient in the production of those advantages to the lord that arose upon the decease of the tenant; and from hence it followed, that Reliefs, as well as Primer Seifins, were incompatible with the Burgage tenure ¹²⁰.

And this doctrine is confirmed by analogical reasoning. “ If a man, says Littleton, is
 “ seised of certain tenements, held of his lord
 “ in knight-service, and grants them, with
 “ license, to an Abbot in Frankalmoign; the
 “ Abbot, since the statute *Quia Emptores*,
 “ shall hold them in knight-service of the
 “ same lord of whom the grantor held,” and
 not in Frankalmoign of the grantor himself ¹²¹.
 In this instance, it is justly observed, though
 the Abbot holds in knight-service and pays

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escuage accordingly, yet upon his death, there is neither ward, marriage, nor relief; the two first because the tenant had vowed celibacy, the last from his corporate capacity, which survived in its pristine vigour in the person of his successor. But the tenure was still knight-service, and if the Abbot with the consent of his convent, aliened the land to a man and his heirs, the incidents of wardship, marriage, and relief recovered from their state of obeyance, and were rendered, as they occurred, to the lord of the fee ¹²².

The Primer Seisin, which was merely an additional relief imposed upon the tenants in chief, is omitted in the above case, as the lands in question were held of a mesne lord. It may also be observed, that the rights of ward and marriage were inapplicable to the Burgage tenure, not only from its corporate nature, but because in the socage tenure, of which it was a species, those incidents were of no advantage to the lord ¹²³.

This perhaps is the true solution of the question. The Burgage tenants, who were certainly in capite, were free from Primer Seisins, the Abbot who as clearly held in knight-

knight-service, was free from reliefs, and the same reason may be applied in both instances, they are equally corporations, they were in consequence perpetual, and the renders in question arose not but upon the death of the tenant.

The Burgage tenures are capable of a three-fold division.

I. The cities and towns that were granted by the King to the inhabitants, who held in chief by the payment of a certain rent ¹²⁴.

II. The scites of such towns as were either decayed or had forfeited their charters, and these were granted to particular lords, upon the same terms as they had been before possessed by the incorporated body.

III. The boroughs that had been granted by the mesne lords to their vassals, in exact imitation of the royal charters ¹²⁵. The two first descriptions of burghesses, the numerous possessors of the smaller military fees, the *immediate* holders of the socage lands, and the more honourable vassals in petit serjeantry ¹²⁶, may be considered as the inferior members who were summoned by the Sheriff to Parliament ¹²⁷.

The constitutions of Runnymede are chiefly confined to the alleviation of the various impositions which feudal dexterity had introduced and aristocratical haughtiness resisted. In a few instances the general principles of liberty are declared with freedom, and established with permanency. In a particular clause the voice of the burghesses is distinctly audible; the franchises of London and of the cities and boroughs of the realm are confirmed in the strongest and the most comprehensive terms ¹²⁸.

The Parliament was expressly convened for the purposes of assessing the escuage and the extraordinary aids which the necessities of the state might require ¹²⁹. The military vassals contributed alone to the former supply, but with respect to the latter, the whole body of the national assembly was equally affected, and equally consulted ¹³⁰.

It is true that all the tenants in capite had a right to sit in parliament; it is equally certain that the King assumed a power of selecting the most considerable or the least refractory. The writs were by no means general. Within the realm of England there were an hundred and eighteen convents that were held of the King
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in chief ¹³¹, but some of the Abbots and Priors were never summoned, whilst others were seldom oppressed with what they esteemed an inconvenient honour ¹³². Their most numerous appearance was in the forty-ninth of Henry the Third, when an hundred and one conventual chiefs were called to Parliament ¹³³. But their numbers gradually decreased, and we may collect from the Rolls that they were reduced to twenty-nine at the period of their dissolution ¹³⁴.

The clause of Magna Charta had a double operation, it provided for the regular meeting of Parliament, it ordained that no tenant in capite, however insignificant, should be omitted. But the latter abuse again prevailed; in the reign of Henry the Third the convention of the nation was model'd by the crown, and it was a complaint of Richard King of the Romans, that the Peers were not *all* summoned according to Magna Charta ¹³⁵.

The King adopted a partiality in the selection of the immediate vassals; but perhaps it was a grievance that was lightly felt and easily forgiven. The time of parliamentary attendance was uncertain, the place was equally indefinite.

definite. In the midst of their most interesting avocations, the husbandman and the artizan were called from York or Chester to Winchester or London. They encountered the fatigues of a tedious journey, and the assaults of the outlawed robbers that infested the forests of the kingdom. When they appeared in Parliament they were awed by the splendor of the nobles and silenced by their imperious deportment. They yielded a tacit, and perhaps a reluctant assent to acts which they did not comprehend; and added the weight of numbers to the machinations of factious influence.

It can hardly be supposed that every freeman of the incorporated boroughs attended personally in the annual conventions. It was in itself, at least, inconvenient. The number to which the members would in this instance have amounted, precludes the admission of the opinion. We may be justified in presuming that they had recourse to an obvious method of preserving their charters and their property; a part of the corporation appeared in the name of the whole.

The inconsiderable tenants in chief, who were unconnected with the boroughs, were reduced

duced to a similar dilemma: but the means of extrication were different. As they were not bound by a common engagement, and were separately dependent on the crown, they could not be correctly represented; but the few that attended received a virtual substitution from the many that were absent.

The partiality of the crown in disfranchising in effect the tenants in chief who were not summoned to Parliament; their own neglect and even their total dereliction of their political rights were the evils that called for reformation. Necessity had pointed out the remedy, and it was adopted by the legislature.

It was ordained that the inferior vassals, who held of the King in capite by military socage tenures, should be excused from their service in Parliament, upon condition that they elected a certain number of their body in the general conventions of the different counties, who should represent their constituents and be invested with their privileges. A similar regulation was adopted with respect to the boroughs, who derived their charters immediately from the crown.

By

By the expedient of representation the royal prerogative was restrained; the writs, which might have been refused to individuals, were regularly directed to the several counties and corporations; the choice of the electors was confined in general to the most respectable of their body; and to alleviate the hardships of parliamentary attendance, a pecuniary allowance was received by the Knights and Burgeſſes.

We are obliged at this period to ſubſtitute conjecture for proof. The records of this memorable event have ſubmitted to the ravages of time: but the fact is uncontroverted and the cauſes may be traced. The right of popular representation was founded on neceſſity and dictated by reaſon. It owed its immediate origin to the benevolent fears of a puſillanimous monarch, or to the propitious ambition of a factious Baron,——we are here involved in indeciſion——But of this we are certain, that in the forty-ninth year of Henry the Third, Knights, Citizens, and Burgeſſes were ſummoned to Parliament ¹³⁶.

The ſcope of theſe inquiries is limited to the æra at which we are now arrived; but a few obſer-

observations on the progressive importance of popular representation may be admitted with some propriety.

The constituent body at its institution was composed of two distinct and hostile descriptions of men, whose manners were as opposite as their opinions. In the days of simplicity a vassal by the military tenure was esteemed the proper representative of his order; whilst the voice of a commercial town was delegated to a merchant or perhaps to a mechanic. The votary of war and vanity, the courteous and punctilious Knight surveyed with arrogant contempt the rude and unpolished trader, who sat by his side in the awkward importance of conscious wealth. Their rules of action were discordant, nor was their interest the same. The separate orders assumed for a time a nominal distinction¹³⁷. They were at length united under the collective name of the Commons, and by a crowded succession of events, their union was cemented.

In the reign of Edward the First the weight of the Commons in the political scale was increased by the revolution in landed property. The statute *Quia Emptores* permitted the free

R

aliena-

alienation of the fiefs, which had hitherto been confined by the rigour of the feudal restrictions. The industrious and frugal Burgeses enjoyed the fruits of their labour, and repaired the mouldering castles of an ostentatious and luxurious nobility.

In the succeeding reigns the power of the nobles continued to decline and that of the commons to increase. The right of parliamentary impeachment became a terrible engine in their hands. The pampered minion was torn from the bosom of his lord and dragged to the scaffold; the rank of the culprit and the authority of his sovereign were insufficient to protect him from the just indignation of an injured people.

The ancient nobility was almost totally annihilated by the protracted and destructive contest of the houses of York and Lancaster. The forfeited estates of those who suffered on the block or bled in the field supplied the necessities of the exhausted state. A new peerage arose, and shared with the independent gentlemen and the opulent yeomanry the spoils of the old. At length, by the relaxation of entails and the freedom of devising by will, the landed

landed property of the kingdom was universally diffused, and the political importance of the commons in consequence augmented.

When Henry the Eighth assumed the reins of government, his treasury was replenished by the immense accumulations of his sordid father. The peerage was divided and the commons were by no means arrived at the full maturity of their strength. The King perceived the concurrent circumstances, and improved them to his own advantage. He extended his prerogative; he dictated to his parliaments; he may be justly esteemed the most despotic monarch that ever filled the English throne.

In the reign of Elizabeth manufactures were improved, and commerce was extended; the opulence of the trading part of the nation was prodigious; estates were acquired, and new families were raised,—the right of representation appeared in a more interesting light to the people. The members disdained the wages of their constituents, and secured their voices by bribery. A proof of the consequence of the representative body as well as of national wealth the luxuriant source of venality.

The political liberty of the people was cherished by the benign influence of the Saxon constitution; it was blasted by the malignant aspect of Norman tyranny. By an happy coincidence of events, the unalienable rights of man resulted from a system of oppression. We are indebted to the arbitrary convention of the feudal vassals for the blessings of popular legislation.

P O S T-

P O S T S C R I P T

TO THE FIRST EDITION.

SINCE the preceding Dissertation was sent to the press, I have perused the Dean of Gloucester's Treatise on Civil Government. It is by no means my intention to enter into the merits of his work, or to weigh the cogency of his general arguments. I thought it however in some degree incumbent upon me to point out a few of the errors and misrepresentations in his account of the Gothic constitution of England; and as I write in defence of my own opinions, I trust I am sufficiently protected from the imputation of a petulant and cavilling disposition.

The Dean, in attempting to debase the rights of the people, has exaggerated the oppressions of the feudal aristocracy. He has endeavoured to demonstrate that the military tenants were the only freemen of the realm, and that the charters of the Boroughs originated at a late period from the indulgent avarice of the Norman monarchs.

In

In page 328 he informs us, “ that the
 “ only distinction necessary to be observed in
 “ those times was the nature of the tenure,
 “ whether it was base or noble—servile or mi-
 “ litary—by the soc or by the sword. If the
 “ lands in question were held by ancient
 “ socage, that is, by a servile or ignoble
 “ tenure, the occupiers were slaves, and bound
 “ to work for their masters.—But if by the
 “ service of the sword, that is, by a military,
 “ a frank, or noble tenure, the occupiers
 “ were the freemen of the realm. The liberi
 “ homines regni were freeholders, warriors,
 “ gentlemen whose duty it was to fight for
 “ their chief.”

The tenants in socage are here degraded to a
 state of villenage, and the Dean was perhaps
 deceived by the common though erroneous de-
 rivation of the term. It has been said that
 socage is the service of the plough, (Litt. 119)
 but the Saxon soc and the barbarous Latin foca
 are incapable of such an interpretation; soc is
 rendered, by Somner, libertas, privilegium, and
 in this sense it is used in many instances in the
 Saxon laws. A law of Alfred, confirming the
 privileges of the Church, is entitled “ Be
 “ Cyricena

“Cyricensa focnum. De privilegiis ecclesiarum
 “(L.L. Alfr. 2)”. In an ordinance of Edward
 the Confessor *foc* or *foca* signifies a liberty, or
 a district or manor invested with a peculiar
 jurisdiction (L.L. Edwd. Conf. 22) and it may
 be observed, that the ancient term *foc* or *foke*
 is indiscriminately applied with the modern term
liberty to those peculiar divisions that are se-
 parated and distinguished from the counties at
 large, by charter or prescription. We say, for
 example, the *foke* of Peterborough and the
liberty of Westminster.

At the Norman conquest, the *focage* tenure
 was described in a manner expressly confirming
 its liberal original. Could the plot of land,
 assigned to the villein for his precarious sub-
 sistence, assume the honourable appellation of
 the *Fraunke Ferme* or free land, which is ap-
 plied by Britton (c. 66) to the *focage* fees?
 It is too gross an absurdity to be seriously con-
 futed. Littleton himself, who derives the
focage tenure from the plough, is afterwards
 guilty of an evident contradiction, when he as-
 sures us that to hold by fealty is *focage*, though
 there is neither the service of husbandry nor a
 rent by way of commutation (Litt. 118).

This

This must be allowed to be extremely convincing; and Sir William Blackstone has given his sanction, principally on this ground, to the free derivation of socage for which I am now contending (Blackst. Com. v. 2. 80.)

The *liberi homines regni* were by no means understood to be the military tenants. The Dean himself confesses, that the feudal establishment, in the different kingdoms of Europe, preserved an uniform tenour; and in France the possessors of the Allodia, who enjoyed the whole profits of their lands, were distinguished by the title of the *Liberi*, whilst the Barons and the Knights were called *Vasalli Regis*, the faithful servants of the crown. If the socmen were not comprized in the list of freemen at the establishment of parliamentary representation, the question will immediately occur, at what period were the holders of socage lands invested with the right of suffrage at the county elections?

The Dean acquaints us that antecedent to æra of the Crusades, “ the boroughs were
 “ little nests of pedlars and artificers, and
 “ were considered as the private property of
 “ their

“ their respective patrons and protectors” (p. 310, 311). But this was by no means the case. The burgesſes beneath the Saxon government were protected by charters and indulged with ample privileges. In ſupport of this aſſertion I ſhall content myſelf with a *few* quotations from our ancient laws.

It appears from the law of Alfred that the boroughs were indeed appurtenant to the royal and baronial demefnes; but the Burgeſſes were ſecured from inſult by ſeveral gracious conſtitutions. The fine for the violation of the peace in a royal borough was an hundred and twenty ſhillings (L. L. Alfr. 36). The privileges of the fairs and markets and the authority of the Portreeve are ſupported by Ethelred (L. L. Ethel. 10). The peculiar juriſdiction of the court of Huſtings in London is eſta- bliſhed by Edward the Confeſſor; (L. L. Edwd. Conf. 35), and William the Conqueror confirms the franchises of the cities whiſt he declares the motives and ſpirit of their inſtitution, (L. L. Wil. Conq. 61).

The intention of theſe miſrepresentations is ſufficiently apparent. They evidently tend to invalidate the exiſtence of political and indeed

of civil liberty beneath the feudal government except in the instance of the Barons. To reduce the husbandmen and the tradesmen to a state of villenage. To deny the existence of the rights we at present enjoy, till they were wrung from the crown by the arms of its vassals, and disseminated by similar usurpations of the commons. And finally, by these insidious deductions to strengthen the author's attack upon the privileges we feel, and the constitution we revere.

NOTES.

GENERAL INTRODUCTION.

¹ **I**N the reign of Gallienus.

² Inst. 140. The true derivation of Withernam is *piyep contra & nam* or *nim captio*, a contrary taking. A process by which the goods of A, are taken in lieu of the goods of B, which he took under colour of distress, and will not deliver when required by law.

³ L'Espr. des L. l. 30. c. 18.

⁴ Dal. F. Prop. 12.

DISSERTATION I.

On the Folclande and Boclande of the Saxons.

⁵ Am. Marcel. 436.

⁶ Cas. de bel. Gal. 233. Tac. de mor. Germ. 637.

⁷ Tac. de Mor. 939.

⁸ Quiconque est un peu instruit, fait que le gouvernement de Mogol est depuis Gengiz Khan un gouvernement feodal; le grand Mogol est semblable à l'empereur d'Allemagne; les Soubas sont les princes de l'empire, devenus Souverains chacun dans les provinces; les Nabobs sont les possesseurs des grand arriere fiefs. Voltaire. Fragments sur l'Inde. 71.

⁹ Montesqu. l'Esprit des Loix, l. 28. c. 1. Notes.

¹⁰ Un. Hist. vol. 19. p. 634, 635.

¹¹ Montesqu. l'Esprit des Loix, l. 31. c. 9.

¹² Co. Cop. 2, 3, 10. Co. Litt. 86.

¹³ Dalrymp. Feud. prop. 8.

¹⁴ Hargr. Ed. Co. Litt. Notes 86.

SECTION I.

¹ Spelm. Glos. 64. Tit. Terra Hereditaria.

² This I take to be a more probable definition than that of Spelman and Coke, a *populi testimonio*.

³ That the Boclande was held by the Thains, is manifest from many passages in the Saxon constitutions; "Si quis Thanorum fit qui in feodo suo (boclanæ) Ecclesiam habet in qua sit cœmeterium, det tunc tertiam partem propriarum decimarum suarum Ecclesiæ suæ." L. L. Edg. 2. L. L. Cnut. 1. It was not however distinguished by the appellation of Thain Lande till a late period of the Saxon government.

⁴ Co. Cop. 3, 4.

⁵ As the payment of a certain rent, reservation of a particular common to the lord, and the right of taking a fixed number of estovers.

⁶ Co. Litt. 86.

⁷ L. L. Æthelb. 5, 13. Si in regis villa aliquis occiderit 50 solidis amendet, si in comitis villa (Eople tunc) aliquem occiderit 12 solidis amercet.

⁸ We are told by two celebrated writers, That Cople was the proper denomination of the Saxon governor of the shire; but the word Cople does not exist in the language; and in the very passages alluded to, we find him described by his proper title Eorl, Eopl 7 Eopl þegen 7 þeowen. Montesq. l'Esp. des L. l. 30. c. 18. Dalrymp. F. Prop. 12. Jud. Civ. Lon. Ed. Wilk. fol. 70.

⁹ Populi concessus.

¹⁰ L. L. Edw. Conf. 35. L. L. Cnut. 8.

¹¹ L. L.

¹¹ L. L. Edw. Conf. 35. Jun. Etimol. Earl and Sheriff. Sir John Fortescue Aland's Notes on Fortescue Abf. L. Mon. 62.

¹² L. L. Inæ. Jud. Civ. Lon. L. L. Alfr. 34, &c.

¹³ L. L. Edw. Conf. 34. Erant enim aliæ potestates super Wapentachium, quas vocabant *þrihin ȝay* 1 le^s quod erat tertia pars provinciæ, qui vero super eos dominabantur, vocabantur *þrihin ȝepereȝay*, from these Thrihings the modern Ridings are derived, (Blackst. Com. 1. 116) as are the Laths from Leth.

¹⁴ Dalrymp. F. Prop. 21. Chart. Will. Conq.

¹⁵ L. L. Edw. Conf. 36.

¹⁶ Montesq. l'Esp. des L. l. 30. c. 8.

¹⁷ Montesq. l'Esp. des L. l. 30. c. 18. L. L. Edw. Conf. 36.

¹⁸ Montesq. l'Esp. des L. l. 30. c. 17 and 18. Cap. Charlemagne, 3 and 4.

¹⁹ Grasio is nothing more than Gerefa, Greve, or Reve latinized.

²⁰ Montesq. l'Esp. des L. l. 30. c. 18.

²¹ Jud. Civ. Lon. Ed. Wilk. fol. 70. &c.

²² L. L. Angl. Sax. Ed. Wilk.

²³ Bract. l. 4. c. 28.

²⁴ L. L. Inæ. 30.

²⁵ Dalrymp. F. Prop. 12.

²⁶ Romefcot, Danegeld, &c. L. L. Edw. Conf. 10, 11.

²⁷ L. L. Edw. Conf. 35.

²⁸ Gavel-lande *ȝayol-lande*, and not from the fanciful etymology of *ȝiȝ-eal-cyn*; that is, give all in kind. Sir J. F. Aland's Notes on Fortescue on Abs. and Lim. Mon. 72. Lambard is also of opinion that Gavelkind is derived from *ȝayol* tribute or tax, but supposes it to be the rent paid by the tenant in focage to the lord. Lamb. Peramb. 528.

The

The old etymology of *gix-cal-cyn* may be found in *Somn. Gavelk.* 4.

²⁹ *Fœd. Alfr. and Guth.* 2. *bucan æcm ceopl* *æc on garol-lanþeyr.*

³⁰ Sir J. F. Aland's Notes on *Fort. on Abf. and Lim. Mon.* p. 72.

³¹ *Seld. Analect.* 2, 7.

³² *Glanv.* 73.

³³ *Fœd. Alfr. and Guth.* 2.

³⁴ *L. L. Edw. Conf.* 10, 11.

³⁵ *L. L. Æthelb.* 5, 13. There seems to be the most intimate connexion between the *Gafol* of the Saxon *Ceorl*, and the *hydage* of the tenant in *focage*. The military service of the *Ceorl* exactly resembles that branch of the *Trinoda Neceffitas*; a duty to which every freeman in the realm was liable.

³⁶ *pepegilo redemptio hominis*, from *pepe homo* and *gilo redemptio, solutio*; sometimes *manboete compensatio hominis*, by it the slayer was redeemed from death, and the injury done the kindred of the slain, according to the rude notions of that barbarous age, in some measure compensated.

³⁷ *L. L. Sal.* 44, 66, 74. *L. L. Rip.* 2, 7.

³⁸ *Somn. Gavelk.* 53.

³⁹ *L. L. Ælfr.* 4.

⁴⁰ *F. N. B.* 198.

⁴¹ *L. L. Ælfr.* 37.

⁴² This is proved by the mention of *Herriots*; which were only paid by the holders of *Boclande*, as appears by the Chapter of *Herriots* *L. L. Cnut.* 69. where the *Eorls*, with the principal and inferior *Thains* are enumerated as liable to that imposition, but not the *Ceorls* or inhabitants of the *Foclande*.—Here it may be observed, that although the *Eorls* did not hold their *shires* as *fiefs*, yet, as they were generally elected from amongst the principal

cipal nobility, it is to be presumed that they were for the most part in possession of Boclande.

⁴³ Sonne ne tco ye hlaxop na mape on his ælra butan his ðihre hepegeata, tunc non assumat sibi Dominus plus possessionis ipsius, quam justum armamentum, i. e. herriotum; if the real property had been intended, the word would not have been ælre, but Boclanre, or simply lanse.

⁴⁴ L. L. Edw. Conf.

⁴⁵ Blackst. Com. 2, 85.

⁴⁶ From yoc, Libertas or Privilegium, and not from Soca, a plough; hence the Socmen or Liberi. Somn. Gavelk. 138. Litt. 119.

⁴⁷ Blackst. Com. 2, 86.

⁴⁸ Britt. c. 66.

SECTION II.

¹ ðegen ðegn.

² Antrustiones, Fideles. Montesq. l'Esprit des Loix, l. 33. c. 16. The great vassals upon the continent were also called Drudes and Drudi, Fideles or Antrustiones, "sine solatio est comitatu Drudorum atque Vassorum". Capitula Rhementis et Rhotomagensis provinciarum ad Ludovic. Regem. an. 818.

³ Montesq. l'Esprit des Loix, l. 3. c. 25. In Italy the Benefica were rendered hereditary, first in the direct male line, secondly in the collateral male line, and thirdly in the female line. L. L. Longobard, c. 11. tit. 8.

⁴ L. L. Æthelb. Inæ, &c. vid. sup.

⁵ L. L. Alfr. 37. L. L. Edw. Conf. 35. In the original the law runs thus, "Se mon yese boclanre hæbbe 7 him his magar laðen þonne yetton þe 7 he hit te moyte yllan oð his mæg bunge gif ðer lipe geþnit oðre geþitneyre þat hit þæra manna sonþor þære 7e hit xuman geþpinþon".

The

The word *māga*, *maga*, in its general sense is *potens*, *valens*; *mæg* or *maga* is also sometimes translated *propinquus*, *cognatus*, but never *parens*; surely the context requires it in this instance.

⁶ It has been said that the prohibitory law of Alfred above cited alluded to all holders of land whatsoever, who were in by descent, and that a power of alienating was also given by implication to all original acquirers; this mistake is derived from the duplicity of the term *terra hereditaria*, and the insertion of *parentes* instead of *potentes*: it is cleared up however by the Saxon words *Boclande* and *maga*, which plainly confine the operation of the law to the feuds, and render the above construction necessary. Dalrymp. Feud. Prop. 95, 96, 97. Arquisivit in the translation of this law is a word of purchase not of descent.

⁷ Montesq. l'Esp. des L. l. 31. c. 35.

⁸ Book of the Fiefs, l. 7. c. 1.

⁹ Jud. Civ. Lon. Edit. in Æthelst.

¹⁰ From *Eclogæ Juvenis*.

¹¹ The word *Theoden* is most unaccountably translated *Rusticus*, in Wilk. Edit. L. L. A. Sax.

¹² *Domesday*, Tit. *Cestresc*.

¹³ *Quod igitur in Charta lego Teignis, & Drengis, & hominibus subintelligo Baronibus, Militibus, & libere Tenentibus*. Spelm. Gloss. Tit. *Drenches*.

¹⁴ L. L. Cnut. 69.

¹⁵ When Stephen swore at his coronation to establish the laws of Edward the Confessor, those laws were considered as a compendium of the Saxon constitutions.

¹⁶ L. L. Edw. Conf. 35.

¹⁷ Lewis the Debonnaire granted lands to certain Spaniards, who fled from the Saracens, on condition that they should serve in the army like the

the Liberi; by the Liberi are always meant the Allodiarii Capit. V. l. p. 500.

¹⁸ Litt. 95.

¹⁹ Manus mittat Dominus ad terram quam ei antea dederat, et si terram hæreditariam habeat ipsa in manus regis transeat. L. L. Edw. Conf. 35.

Tacitus informs us that cowards were drowned by the Germans; the same spirit breathes in this passage, Tac. de mor. Germ.

²⁰ Montesq. l'Esp. des L. l. 30. c. 20.

²¹ L. L. Alf. 4.

²² Sir J. Fort. Aland's Pref. to Forton Abf. & Lim. Mon. 98. Spelm. Gloss.

²³ Book of Fiefs, 1. Tit. 1.

²⁴ L. L. Cnut. 69.

²⁵ L. L. Cnut. 68. Rihte hepegeata justum armamentum.

²⁶ L. L. Edw. Conf. 35.

²⁷ Domesday, Tit. Waldenford.

²⁸ L. L. Hen. 1st. c. 1.

²⁹ Id. c. 14.

³⁰ L. L. Edw. Conf. 35.

³¹ L. L. Edw. Conf. c. 22. Spelm. Gloss.

³² L. L. Edw. Conf. c. 23. Soc immunitas privilegium be cynicena yocnum. L. L. Alf. 2.

³³ L. L. Edw. Conf. c. 24.

³⁴ Id. c. 25. Fæd. Æthelr. cum Anlavo, c. 10. be ceamum.

³⁵ L. L. Edw. Conf. 26.

³⁶ Illi vero qui non habent has consuetudines, coram justitia regis, rectum faciant in hundredis, in wapentachiis, vel in Scyris. Id.

³⁷ L. L. Æthelb. 2. & infra.—Inæ, 2. & infra.—Alfr. 16, 26. Æthelst. 6. Cnut. 6.

³⁸ Montesq. l'Esp. des L. l. 30. c. 20. Spelm.

³⁹ L. L. Salic. Tit. 55. Marculf. Form.

DISSERTATION II.

S E C T. I.

¹ **T**HE laws that were made in France under the first and second race, in the assemblies of the lords and bishops, were called Capitularies. L'Esp. des. L. 28. 9.

² The characters of the Visigoths, Lombards, Burgundians altered considerably after their establishment in the Roman province. Id. 28. 1.

³ The Scandinavian Goths had different laws in different districts. In the North they had the Frostatinge-lag, in the South the Gulatinge-lag. Ragenfonis Lex Frostoniensis ap. Runolph. Jon. The province of Dalecarlia had also its peculiar customs. Hicckes. Thes.

⁴ L'Esp. des L. 28. 2. Marculf. Form. 1. 8. LL. Rip. tit. 31.

⁵ LL. Cnut. 14. LL. Edw. Conf. 12. Myrcen-laga, Dan-laga, Westseaxna-laga: there is a ridiculous derivation of Myrcen-laga from Marcia a British queen; which is properly rejected by Spelman. Gloss. tit. Myrcen-laga. The law of the Jutes in Thanet was swallowed by that of the West-saxons.

⁶ Alcoran, &c.

⁷ Tac. de Mor. Germ.

⁸ LL. Boior. 1. 7.

⁹ LL. Rip. 89. LL. Longobard. 2. 52. 9. Id. 1. 7. 15.

LL. Sal. 1. 2. 3. 4. 5. 6. 7. LL. Bavar. 2. 20. LL. Æthelb. LL. Loth. et Edr. LL. With. LL. Inæ, 21 et infra. LL. Ælfr. 40 et infra. LL. Æthelst.

Æthelst. 1, &c. LL. Edm. 1, &c. LL. Cnut. 1.
LL. Edw. Conf. 15.

¹⁰ The appellations of the tenants in capite, however distinct, are all derived from some term expressive of the closeness of the connexion between them and the king, and of the fidelity which they owed him as their liege lord.

Cyninges Thegen, Regis Thainus originally signified the king's soldier in an emphatical sense, as the warrior in whom he more particularly confided.

Baro was derived from Vair Goth, Wer Sax. and Bar and Baro Franc. Theotisc. Homo. The promise to be the *man* of the superior lord was the most essential part of the oath of fealty, and was understood as a declaration of obedience and fidelity. Baron in its original sense was also a forensic term in Normandy and England, and signified an husband. Hicck. Th. 1. 2. 92.

Drudo was derived from Truad Franc. Theotisc. and Treowad Sax. Fidelis. Id. 94.

Antrustio had the same original.

Vassallus from the Franc. Theot. Fads-scalc. Fidelis minister. Id. 1. 2. 100.

¹¹ Thegen, Thegn, Thainus, Tainus, Thane, Thain, was the usual title of honour in England till the Norman conquest, and in Scotland till a later period. LL. Æthelr. Ed. Wilk. f. 118.

¹² LL. Edw. Conf. 21. 22. 23. 24. 25. 26. 28. The rear vassals were the knights who held of the tenant in capite or mesne lord; they were called in France Vavassores, Valvassores, Vavassours, a corruption or rather a diminutive of Vassi, Fiduciarii. Du Cange Gloss. tit. Vavass. The Saxon terms for a rear vassal were Medemra Thegna & Les Thegna, an inferior Thain. He was also stiled Theoden or Lord, in the same manner as the Vavassour or

Knight of the Normans received the appellation of Dominus. LL. Cnut. 69. Gloss. ad. Spelm. Cod. tit. Thainus. Jud. Civ. Lon. Edit. in Æthelst.

And here perhaps it may not be amiss to observe, that the word *Theoden*, by the unaccountable misrepresentation of a learned and indefatigable writer, has been rendered *Servus*, *Rusticus*. *Theow* it is true may be so translated, but the proper signification of *Theoden* is *Dominus*. Somn. Dict. Chron. Sax. Abing. Poet. ap. Wanl. Hick. Thes. vol. 3. 95.

Wilkins is guilty of the mistake in his edition of the Saxon laws. Jud. Civ. Lond.

¹³ The freemen were those who were not attached to particular Lords by the feudal ties; or subject on the other hand to base and villein services. They were known in France by the name of the *Liberi*, and their territory by that of *Allodium*; from All Fr. Th. All; and Lod or Lood Cimbr. the produce of the land; so All-lood signified the absolute produce of the land, without any payment, render, or acknowledgment; the dominium directum as well as the dominium utile. Hicet. Thes. 1. 2. 90. L'Espr. des L. 30. 17 and 18.

In England they received the appellation of Ceorls or Husbandmen and Socmen or Freemen; and their land was called the Folclande.

¹⁴ LL. Edw. Conf. 32. 33. 34. 35.

¹⁵ Id. 32.

¹⁶ Spelm. Gloss. tit. Friborg.

¹⁷ LL. Edw. Conf. 15.

¹⁸ LL. Æthelr. 1.

¹⁹ Fœd. Ælfr. Guth. 3. It is probable that the custom originated from hence, which afterwards became general, of extending the jury upon the trial of a tenant in capite to the whole body of his peers, instead of confining it, as in common cases, to twelve or any other arbitrary number. In *this* instance

instance *all* the Thains in the kingdom were answerable for the crimes of one of their brethren; and not a particular association of *ten* alone, which was the case with respect to the inferior Thains and Al-lodiarrii.

²⁰ LL. Æthelr. 1.

²¹ LL. Edw. Conf. 20.

²² Blackst. Comm. 3. 324.

²³ Fœd. Ælfr. & Guth. 3.

²⁴ Id.

²⁵ LL. Æthelr. 3. Ed. Lamb. Mirror, c. 5. sect. 1. de Ælfredo Rege. LL. Edw. Conf. 1.

²⁶ In the ordinances of the marches of Wales in the time of Æthelred, the juries are directed to be composed of six English and six Welch; this was the origin of the modern juries *de medietate linguæ*. Conf. de mot. Wal. temp. Æthelr.

²⁷ The Rathimburi and the jury of the count in France had no definitive right of judgment; they acted merely as directors of the Ordeal and the Combat, and as assessors of the Freda and Compositions: this appears to be the extent of the authority of the Pares.

²⁸ The juries in the courts baron were introduced by the Normans.

²⁹ See the account of the death of Godwin, M. West. Glanv. l. 14. c. 1. Lamb. de Ord.

³⁰ Gl. & Lamb. ubi supra.

³¹ Spelm. Gloss. tit. Ordale. Lamb. de Ord.

³² LL. Æthelr. Ed. Lamb. Mirror. c. 5. sect. 1. LL. Edw. Conf. 1.

³³ Fœd. Ælfr. & Guth. 3.

³⁴ Brompt.

³⁵ M. West.

³⁶ The villein had no alternative.

³⁷ L'Espr. des L. 28. 17.

³⁸ LL. Æthelst. 7. 19. 21. 23. Jud. Civ. Lon. LL.

LL. Edg. 62. LL. Edw. Conf. 9. Spelm. Gloss. tit. Ordale & Lada. Gloss. ad LL. Sax. Ed. Wilk. tit. Ordale. LL. Rip. 31. 5. LL. Hen. 1. 64. 12. The trial by the cross seems not to have been established by the Saxons.

³⁹ LL. Inæ, &c.

⁴⁰ LL. Edw. Conf. 12. LL. Æthelb. 5. 13. LL. Inæ, MSS. ap. Spelm. 75. Capit. 1. 512. Weregild solutio or redemptio hominis, Manbota compensatio hominis; Wita seems to have been a mulct for slight offences, in opposition to Bota, which was appropriated to more serious crimes: Fytwite, for example, was the fine for engaging in an idle brawl, and Man-bote the compensation paid by a murderer.

⁴¹ Fredum was derived from Fride, Fr. Th. Frythe Sax. signifying peace; by the payment of the fredum the lord's peace was purchased.

⁴² L'Esp. des L. 28. 12.

⁴³ LL. Inæ, 70, &c.

⁴⁴ LL. Æthelb. 5. 13. Fæd. Ælfr. & Guth. 2. LL. Sal. 44. 66. 74. LL. Rip. 2. 7.

⁴⁵ LL. Edw. Conf. de Sac. Soc. Thol. Theam, & Infangthefe.

⁴⁶ LL. Ælfr. 4.

⁴⁷ LL. Edw. Conf. 35.

⁴⁸ Tac. de Mor. Germ.

⁴⁹ LL. Cnut. 22. LL. Æthelr. 4.

⁵⁰ This appears to be true state of the constitution of a Saxon jury in the determination of civil disputes. Various and contradictory are the opinions of Spelman, (Gloss. tit. Juratores & Assisa.) Hickes, (Thes. Ep. Dif. l. 1. v. 2. f. 34.) Dufresne, (Gloss. tom. 2. p. 167.) Glanville, 2. 10. 16. Polydore Virgil, and many others upon this abstruse subject. I have compared them as illustrating the the Saxon laws, but have been directed in my determination

termination entirely by the latter, which are expressly in favour of the actual establishment of a jury of twelve men for the decision of civil causes in the reign of Edward the Confessor; though perhaps it differed from the modern tribunal in the mode of its election, and in the permanency of its jurisdiction. LL. Æthelr. 3. Conf. de mont. Wallic e. LL. Edw. Conf. 56. & 1.

The jury was established in very early times in the different kingdoms of Scandinavia; it was called *Nembda*, *Nominatio*, because six of the jury were named by the plaintiff, and six by the defendant. Olai. Verelii in indice Goth.

In the laws of the Visi-goths we find "that no
" servant, or one under the controul of another,
" could serve on a jury; that a juryman might be
" fined for not attending; that the jury was liable
" to an amercement upon an attain in false judge-
" ment; and that it was properly summoned from
" the district where the land lay:" it is unnecessary to point out the resemblance between these regulations and those that prevail in our own law. LL. V. Goth. Edit. Ol. Rudbeckii, ch. 2. 3. 6.

The origin of the *Nembda* is generally imputed by the most rational of the northern antiquaries to Waldemar king of Denmark and Norway in the twelfth; or, with great appearance of probability, to Regner Lodbrog in the ninth century. Resenii Notæ ad jus Aulicum Canuti. Olaus Wormius, 85. Sax. Gram. Hist. Dan. c. 9.

Some there are who have deduced this custom from the antient constitution of Troy, from whence according to a well-known hypothesis, the great Woden is supposed to have emigrated, and to have carried its institutions into the delightful regions of the north, the seat of tranquillity and of the terrestrial paradise—but these are the dreams of prejudice

judice and scientific romance. Rudbeckius ubi supra. Caroli Lundii Ζαμολξίς. Edda Island. Edit. Hafn.

“ Ibi Odinus principes quemadmodum in Troja constituit, duodecim prefectos statuens in Sigtunensi qui jus dicerent.” Raims. Kringal, c. 2.

51 LL. Edw. Conf. 1. & 35.

SECTION II.

52 Tac. de mor. Ger.

53 Id.

54 We can discover no traces of the word *Framed*, which is given us by Tacitus as the German term for a lance, in any of the Teutonic dialects; it is possible that it was borrowed of their neighbours by the Germans who bordered upon Gaul, and was consequently of Celtic original. We are assured by Cæsar and Lucan that *Bardus* was the Gallic word for Poet; and by Tacitus that it retained the same signification in Germany; and in honour to the accuracy of those illustrious writers, we may observe with pleasure, that at this day among the Britons, the undoubted progeny of the Celts, the appellation of a poet is *Bardd*; and that the ancient Goths had also their *Barda*, which is at present retained with little or no variation in most of the languages that are immediately derived from the Teutonic.

55 Tac. de mor. Ger.

56 Id.

57 Pott. Ant. Græc.

58 If the censure had been intended to stigmatize the coward, the sword would certainly have been comprehended with the shield.

59 Tac. de mor. Ger.

60 Id.

61 Fairy

⁶² Fairy Queen, b. 3. c. 4. The shield in the above quotation is stiled the "three-square 'scutcheon;" this expression illustrates what has been said respecting the unsuitness of the German shields to defend the face; they slanted gradually from the base at the top, and ended in a point at the grasp. Their form was extremely convenient for the horseman, in the management of his reins; but very ill adapted to guard his face from the assaults of his antagonist; when he raised his arm for that purpose, he presented a narrow slip of steel, scarcely wider than his wrist, as his security against the terrible impression of the Roman Pilum.

⁶² Knight, Cnythe, Sax.

⁶³ Form, Marculf. Præfatio. LL. Lomb. 2. 59.
3. 41. 6.

⁶⁴ L'Esp. des L. 28. 14. Dalrymp. F. Prop.
308.

⁶⁵ L'Esp. des L. 28. 18. LL. Lomb. 1. 2. tit.
55. l. 34.

⁶⁶ L'Esp. des L. 28. 18.

⁶⁷ Id. 28. 19.

⁶⁸ LL. Sal. Pactus legis 76. The Salic law determined by hearing witnesses on both sides.

⁶⁹ Epist. Ep. Agob. apud Spelm. Gloss. The law Gombete, compiled by Gundebald, was long in use among the Burgundians, as the Salic law was in France. Mezeray Hist. de Fr. 20.

⁷⁰ L'Esp. des L. 28. 19.

⁷¹ Battle was joined at Orleans upon a demand of debt. Chart. Lewis the younger.

⁷² Beauminois, c. 61. 312.

⁷³ Chart. Louis le Gros.

⁷⁴ LL. Gulielm. Conq. 58.

⁷⁵ Id. 63.

⁷⁶ Id. 63.

- ⁷⁷ Id. 68. 69. 70.
⁷⁸ Huntingdon, 371.
⁷⁹ Mat. Paris, 9.
⁸⁰ Spelm. Cod. in Wilh. Ruf. apud Eadm. 48.
⁸¹ LL. Hen. 1. 72.
⁸² Id. 75.
⁸³ Id. 48. Spelm. Cod. in Hen. 1.
⁸⁴ LL. Hen. 1. 72.
⁸⁵ Chart. Hen. 1. an. 1108.
⁸⁶ Math. Paris, 12.
⁸⁷ Mezeray Hist. de Fr. 40.
⁸⁸ Brit. 22. Mir. 2. 7. 3 Inst. 132. 2 Inst. 68.
 Id. 69.
⁸⁹ Glanv. 14. 1. Bract. 3. 118. 119. Brit. 8.
²⁹ Fleta 1. 21. Mir. 2. 11. Litt. 500. 3
 Inst. 132.
⁹⁰ Glanv. 2. 11. 21. F. N. B. 4.
⁹¹ Spelm. Gloss. tit. Camp.
⁹² The same form was observed in both instances.
⁹³ From hence originated the modern custom of bringing seconds into the field, who soon deviated from the ancient punctilio, and not only appeared with arms, but exercised them upon each other; this barbarous custom seems at length to be happily abolished.
⁹⁴ Laissez les aller en le nomme de Dieu.
⁹⁵ Such was the interference of Richard II. in the famous combat between the dukes of Hereford and Norfolk.
⁹⁶ Constitutio Thomæ de Woodstoc Ducis Glocestriæ edita in tempore Richardi secundi, apud Spelm. Gloss. tit. Campus. A spirit of equity and impartiality, and a nice observance of punctilio are prevalent through the whole of this authentic and curious document. We cannot help being surprized that in an age when the general notions of justice

justice were so clear, the mode of ascertaining the right should be so absurdly precarious.

The Marehall, who is frequently mentioned in the above ordinance, was an officer of high distinction, as may be gathered from the import of his name, which signified the great or principal servant to the king, from mare, magnus, & scale, servus. Fr. Theot. He was sent as ambassador in cases of peculiar importance: king Richard I. deputed his Marehall to the governor of Messina to desire provision for his army; in military affairs he was only inferior to the constable; he had a deputy or seneschal (from sinn, vicem, & scale, servus) and his inferior officers were the heralds and pursuivants. Matt. Paris 160.

⁹⁷ Spelm. Gloss. tit. Campus.

⁹⁸ L'Esp. des L. 28. 20.

⁹⁹ Id. 28. 29.

¹⁰⁰ Spelm. Gloss. tit. Campus.

¹⁰¹ The tournaments were probably ingrafted by the Barbarians on the amphitheatrical amusements of the Romans.

¹⁰² A soldier (says Matthew Paris) who had passed his life in the murder of the innocent, in rapine and in tournaments. Matt. Paris 218.

¹⁰³ You may find a full account in the above historian of the uncommon strength and valour of Godfrey of Bulloign and Robert the Norman. M. Paris 36. And the acts of Richard I. Id. 170 and 194.

¹⁰⁴ Gierusalemme, Cant. 20.

¹⁰⁵ In an. 1178, Henry the son of Henry II. held tournaments in France with running at the ring, and was frequently the victor. M. Paris 136. Id. 177.

When the barons were in possession of the city of London against king John, they amused themselves with a tournament. Id. 265.

¹⁰⁶ The Mischianza was a festival held at Philadelphia in the year 1778, and is pretty accurately described in the Dissertation.

¹⁰⁷ Rapin.

¹⁰⁸ The strange decisions of the several juries under the direction of Hale, upon the trials of the reputed witches in the last century, are well known; as is the more equitable determination of a Buckinghamshire jury in the present, in the case of some of the inhabitants of Tring in Hertfordshire.

¹⁰⁹ L'Espr. des L. 28. 20.

As the Salic laws are mentioned in the foregoing Dissertation in terms of respect, as institutions of a more reasonable and equitable contexture than the various Barbarian codes of that dark and superstitious age; I may perhaps be forgiven in my attempt to dispel the almost impenetrable darkness which has obscured their original.

The President Montesquieu has assumed, "that the houses of the ancient Germans were surrounded with a small inclosure," and he refers us to Tacitus. "*Vicos locant, non in nostrum morem connexis & coherentibus ædificiis; suam quisque domum spatio circumdat.*" The interpretation of which seems to be this: "The houses of their towns are not connected like ours in a continued range of buildings; but are all surrounded with a void space." By this construction we make the Historian consistent with himself, and with Cæsar, when they assert that the Germans had no inclosures, boundaries, or land-marks: *Neque quisquam agri modum certum, aut fines proprios habet.* (Cæsar. de bello Gal. Com.) I shall not attempt to follow the President in his attempt to prove, that this fancied inclosure descended to the sons alone; but shall confine myself to the consideration of his last assertion, that it received its
appel.

appellation of the Salic land, or the land of the house, from Sala, that signified an house.

The word Sala it is presumed is of Teutonic origin, but it is in vain that we search for it in any of the Teutonic languages; Hus was the common term for an house in the Gothic, the Cimbric, and the Anglo-Saxon; Sala, it is true, may be discovered in the glossaries of the barbarous Latin; but its proper signification was an *Hall*; it was derived from the Gothic Alhs, the Cimbric Hal and Holl, the Franco-Theotiscan Sal, and the Saxon Healle; the English Hall is derived immediately from the Saxon; from Sal the Franks formed the Latin Sala, the French form Salle, the Italians Sàla, and the modern British Saloon.

The primitive signification of Alhs, Sal, and Healle, was the court of the prince, or the edifice in which the popular assemblies were convened; when the feudal lord was invested with the judicial power, the term was applied to the largest and principal apartment of his mansion, where the decisions of justice were pronounced, and the rights of hospitality maintained.

But antecedent to the departure of the Franks from Germany (and the Salic law originated before that period) the constitution of the feuds was unknown, the houses of the noble and the brave were constructed with mud and rushes; they were deficient in every convenience, and cannot be supposed to have contained a variety of rooms with separate denominations and distinct offices.

Hence it follows, that Sal or Sala was never applied by the Franks to any distinct part of the house of a private individual, till after the introduction of the feuds; much less was it extended by the rhetorical figure of a simple and illiterate nation to the house itself.

If the Salic law had really been derived from Sala, it must have been confined to those peculiar constitutions which respected the land and house from whence it received its denomination. But this is not so much as surmised; the Salic code comprehended a vast variety of articles, it was received by the Franks together with the Ripuarian; and may be fairly considered as a written collection of the customs of the Salii, as the latter was of those of the Ripuarii.

Nor is it necessary to recur to these subtle refinements for the reason of the female incapacity in the succession to the crown of France; it is given us by the President himself, and is as satisfactory as it is ingenious: "Women, (says he) succeeded neither to the Empire nor to France, because at the establishment of those monarchies, they were incapable of succeeding to fiefs; whereas in monarchies that were founded after the establishment of the perpetuity of the fiefs (as by the Normans in England) the heir-female was permitted to succeed (*a*)."

Hickes is of opinion that the Salic laws, in general, received their denomination from the courts of the kings and princes in which they were made; or rather (I presume) collected: but in this sense the Theodosian code and the book of the fiefs might with equal propriety receive a similar appellation (*b*).

Nothing perhaps is more puzzling in the perusal of feudal antiquities, than the distinction between the Lord of the Beneficiary, and the Governor of the Allodial Tenants. The chiefs of the counties, shires, and provinces, in particular, have been differently described in different ages and kingdoms;

(*a*) L'Espr. des L. 31. 32.

(*b*) Hickes. Thes. v. 1. l. 1. f. 97.

inſomuch that it is almoſt impoſſible to diſcover the ſame judicial officer diſguiſed under a variety of terms, Cimbric, Francic, Saxon, Latin, German, French, and Engliſh. I ſhall endeavour to trace him however through all his changes.

When the Franks had eſtabliſhed themſelves in Gaul, they appointed a ſupreme governor in every province, with authority over all, whether Franks or Romans, who were *unconnected by the feudal tie*, whom they dignified with the title of Graff, a name in their language importing wiſdom: this in the barbarous Latin of the times was rendered Graſio; but was afterwards changed, when the Franks had laid aſide their primitive dialect, and had formed the modern French upon the ruins of the Latin: the *Graſio* aſſumed the appellation of *Comes*, which had been appropriated in the lower empire to a ſtation of the firſt importance; it was melted however into the vernacular term *Count*, which has extended itſelf into Spain, Italy, and Britain, and even into Greece; where the *Κόντος* in the twelfth century was an officer of great dignity.

The Saxons, when they divided their acquiſitions in Britain into ſhires, appointed a governor in each, whom they called Gerefa, a term of the ſame import with *Graff*; his authority was confined in like manner to the Socmen or Freemen. It is probable that his title of *Eorl* was introduced by the Danes at a very early period; it ſeems to be a corruption of the Cimbric *Jarl*, and became the uſual appellation of the Gerefa under the Dano-Saxon government. As for *Ealdorman* it was a general name importing veneration and eſteem, as the Roman ſenators were ſtiled *Patres*, the Saxon Eorls were conſidered as *Ealdormen*, non propter ætatem (ſays the law) ſed propter ſapientiam & dignitatem. But when the Normans had ſubverted the ancient
con-

constitution of the kingdom, the shires assumed the form of fiefs, in imitation of a similar revolution in France: the *Eorls* became feudal tenants, they received the name of the *Counts*, they asserted *their* prerogatives, and submitted to *their* services.

The name of Count however expired with the use of the Norman dialect, the ancient title of Eorl was resumed (with the alteration of a single letter) and continues as an honorary distinction, though the military services have been long since obsolete, and the civil jurisdiction consigned to an officer who retains the distinguishing appellation of *Vicecomes* or deputy to the *Earl*.

Perhaps it is unnecessary to add that Grave, derived immediately from the Francic Graff, continues to be the appellation of a Count throughout the German empire.

Spelm. Gloss. tit. Eorla, Eorl.

Wilk. Gloss. tit. Eorl, Aldermannus.

Jun. Etym. Eorla.

LL. A. S. Jud. Civ. Lond. f. 70. Ed. Wilk.

Bede Sax. Transl. Ælfr.

Sax. Chron. an. 938.

Cantacuzeni Historia, l. i. c. 40.

Diët. Cimbr. Run. Jonæ. ap. Hickel. Thef. l. i. v. 2.

LL. Edw. Conf. 35.

Du Cange, Gloss.

DISSERTATION III.

S E C T. I.

¹ **S**IR J. Dalrymple. Feud. Prop. Hist. Const. of Parliam. Sp. Gloss. tit. Allod.

² The Allodial or Gavel lands were held either in Socage or Gavel-kind. The Counts in France originally held their counties as Allodial property; but afterwards as fiefs.

³ Du Haillan, 184. Parliaments were invented by Pepin Maire du Palais; "Aux quels coustumier-ment assistoient les Princes & les plus grands Seigneurs de Royaume, les plus venerables gens d'Eglise, & les *plus honorables hommes entre les peuples*." The name of Parliament was afterwards transferred by Philip le Bel to the courts of dernier resort at Paris, and the provincial cities; the general assembly was distinguished by the name of the Council of the Three Estates. Du Haillan, 184, 185, 187. Whitelocke says, that the last time of its meeting was in the year 1561, under Francis the Second; but Dr. Robertson, with more propriety, in 1614. We have an account in Thuanus of the meeting of two assemblies. The first at Paris in 1558, for the express purpose of raising supplies, "*ut rem pecuniariam expediret*." The King opened the session with a speech; the Cardinal of Lorain appeared as prolocutor for the Ecclesiastics, the Duke of Nevers for the nobles, the President St. André for the lawyers, who had been lately added to the three estates, and Guillart de Mesnages for the people. Thuan. tom. 1. 681. The last convention he mentions was at Blois in 1588. Tom. 4. 625.

⁴ Mezeray 47.

⁵ Cap. Car. Calv. anno 864. Art. 6.

⁶ Præm. Legum Inæ. Ethelb. With. Loth. & Edr. L. L. A. S. Ed. Wilk.

⁷ Co. Epist. 9. Rep.

⁸ The Charter appears with the name of Hardicanute, but Spelman thinks from the occurrence of the term Parliament, that it was manifestly of a later original. Sp. Conc. 534. And this opinion is confirmed by the mention of Ethelburg as Archbishop of Canterbury in the reign of Hardicanute, although we are assured by Matthew Westminster, that Eadsius succeeded to that see on the death of Ethelburg, two years before the accession of the monarch in question, whom he afterwards crowned.

⁹ These terms were indiscriminately applied.

¹⁰ L. L. In. L. L. Alfr. Fœdera. Alfr. & Guth. & Edwd. & Guth. L. L. Athelst. L. L. Edm. L. L. Edg. L. L. Athel. L. L. Cnut. L. L. Wil. Conq.

¹¹ Sp. Conc. i. 539, 552, 189, 494, 387, 428, 444, 494.

¹² Chart. Ethelr. Sp. Conc. i. 514.

¹³ L. L. Edwd. Conf. 21.

¹⁴ L. L. In. 5. Alfr. 5. Cnut. 89. Edwd. Conf. 2, 4, 5, 8.

¹⁵ L. L. Edwd. Conf. 35.

¹⁶ See the preambles of the Saxon laws in general.

¹⁷ Chart. Edg. Hickef. Th. 1. Chart. Biornw. Hickef. Th. 1.

¹⁸ A Duke in Sweden is called Heertog.

¹⁹ L. L. Edwd. Conf. 36.

²⁰ Sp. Gloss. tit. Ald. Earl. The Earl is called Jarl. in vit. Hialmari. M. S. Run. Hickef. Th. 1.

²¹ L. L. Wil. Conq. 1.

²² Sp. Cod.

²³ Lamb. Per. 500. Earls are mentioned in Sax. An. an. 938. Eorla Drihten.

²⁴ Sp.

²⁴ Sp. Gloss. tit. Aldermannus.

²⁵ Const. Edwd. Sen. Sp. Conc. i. 387.

²⁶ L. L. Alfr. 2. Edwd. Conf. 26, 35. Sp. Conc. i. 189, 194. Chart. Edg. Hicel. Th. 1. Chart. Biornw. Hicel. Th. 1.

²⁷ Book of the Fiefs, 1, 2. Franco Gallia 14. L'Espr. des Loix, 6, 1.

²⁸ The Disc. Thegn was the dapifer or steward, an officer of great consequence in the households of our ancient monarchs. Sp. Conc. i. 507. See also Mezeray in the customs under the first race.

²⁹ Co. Litt.

³⁰ L. L. Edwd. Conf. 26.

³¹ L. L. Cnut. 17. Cap. Charl. i. 135.

³² L. L. Cnut. 17.

³³ There are three propositions which I shall undertake to prove in confirmation of what I have advanced, respecting the popular election of the Eorls. 1. That the Gerefa was anciently called the Ealdorman. 2. That the Eorl, the Ealdorman, and the Gerefa were convertible terms, and that the officer described under those titles presided with the Bishop in the Folcmote, and was the supreme judge of the county. 3. That he is invariably set in opposition to the Thains.

In support of the first of these propositions we learn from the express authority of the laws of Edward the Confessor, that the Gerefa or Greve (the Grasio of the Franks, the Grave of the Germans) was anciently stiled the Ealdorman. "Gravi
" qui super alios prefecturam habent, ita apud
" Anglos antiquitus vocabantur Ealdormen, quasi
" seniores, non propter senectutem, cum quidem
" adolescentes essent, sed propter sapientiam."
L. L. Edwd. Conf. 35.

The second point may be proved by numerous quotations from the Saxon laws. "In illo comitatu
" sint episcopus & aldermannus." L. L. Edg. 5.

“ Et illis Folcmotis intersint episcopus & aldermannus.” L. L. Cnut. 17. “ Si sacris initiatus vel alienigena per aliquam rem seducatur de pecunia vel de vita, tunc Rex ei adesse debet, vel Comes (Eorl) qui in regione, & Episcopus gentis ejus pro cognatis & pro patronis, &c.” Fœd. Edwd. & Guth. 12. “ Tunc curet Oslac Comes (Eorl) & exercitus omnis qui in comitatu (Ealdordome) commoratur.” L. L. Edg. f. 82. “ Comites (Eorlas), & Duces, & judices & præfectos similiter etiam oportet justitiam diligere coram Deo & coram mundo.” L. L. Cnut. Be Eorlam. “ Archiepiscopi, Episcopi, Comites, Barones & omnes qui habent Sacam, & Socam, Thol, Theam, & Infangthefe.” L. L. Edwd. Conf. 21. “ Et volo ut Episcopus & Gerefa hoc jubeant omnes illos qui eis obedire debent.” L. L. Athelst. 1. “ Sub præfecti (Gerefan) testimonio in conventu populi (Folcmote).” L. L. Athelst. 10. The Eorl, the Ealdorman, and the Gerefa are indiscriminately described in these constitutions, as the heads of the counties, and the companions of the Bishops in the Folcmote.

The last proposition is evident from the following passages. “ Si ad *Aldermannum* vel *Thainnum* fugiat, &c.” L. L. Athelst. 2. “ *Eorl* & *Ceorl*, *Thegen* & *Theoden*.” Jud. Civ. Lond. “ Et quilibet *Gerefa*, qui hæc negligit, solvat, &c. “ et si sit *Thainus*, qui hoc facit, idem sit.” L. L. Athelst.

The governors of the shires, distinguished by these various appellations, were elected by the people in the Folcmote. “ Item aliud Folcmote esse debet in quolibet comitatu per provincias & patrias totius regni universas, scilicet in capite Kal. Oct. ad providendum ibi, quis erit Vicecomes (Gerefa), & qui erunt eorum Heretochii.” L. L. Edwd. Conf. 35. See also Hicck. Th. Chart. Biorn.

Biorn. 2. 80. & Chart. Edg. 2. 159. Sp. Gloss. tit. Ald. and Sir J. F. Aland's preface to Fort. on Abf. & Lim. Monarchy 43. (See also a Dissertation on the Folclande and Boclande of the Saxons published by White 1778, 12. And a Dissertation on the Judicial Customs of the Saxon and Norman age, 1780. Notes 43).

³⁴ L. L. Edwd. Conf. 1, and 35.

³⁵ Preambles to the Saxon laws.

³⁶ L. L. Edwd. Conf. 35.

³⁷ L. L. Edwd. Conf. 10, 11. Sir J. F. Aland's preface to Fort. on A. and L. Monarchy, 72.

³⁸ Du Haillan, 184, 185.

³⁹ Franco Gallia, 141.

⁴⁰ Fouchet's Antiq. temp. Pip. 26.

⁴¹ Thuan. Hist. tom. 1. 681.

⁴² Franco Gallia, 40.

⁴³ Rap. 106. Sax. Chron. 955, 956.

⁴⁴ Rap. 130. Sax. Chron. 1041.

⁴⁵ Rap. 134. Sax. Chron. 1066. Speed 48. Pol. Verg. 141.

⁴⁶ Mat. Par. 5. Athelstan was elected King, "magno consensu optimatum, & omnium favore." Malmib. 102.

⁴⁷ Preambles to the Saxon laws.

⁴⁸ For Edgar's fleet see Sax. Chron. For Alfred's see Mirror, 1, 5.

⁴⁹ Sp. Conc. 1. 230. Pol. Verg. 4. 87. Sp. Gloss. tit. Romefcot.

⁵⁰ P. Verg. 4. 87. Whit. Parl. 2. 180.

⁵¹ Sp. Conc. 1. 312. Sp. Gloss. Romefcot. P. Verg. 487. For Ina's monastic life see Hig. Polychronicon. "Plebeio cultu amictus inter mendicos consenuit."

⁵² For the introduction of Romefcot into Mercia by Offa, see the same authorities.

⁵³ L. L. Edg. 4.

⁵⁴ L.

- ⁵⁴ L. Cnut. M. S. Sp. Gloss. tit. Romefcot.
- ⁵⁵ Statuerunt Angli. Speed. A Rege & proceribus decretum est. Sax. Chron.
- ⁵⁶ L. L. Edwd. Conf. 12. Mad. Hist. Exch. b. 1. 28. The story of Edward the Confessor's repeal of the tax may be found in Sp. Gloss. tit. Danegeld, from the authority of Ingulphus.
- ⁵⁷ L. L. Cnut. 17.
- ⁵⁸ Sp. Conc. 1. 432. Hiccl. Th. 2. 161.
- ⁵⁹ Sp. Conc. 1. 631.
- ⁶⁰ Sp. Conc. 1. 333.
- ⁶¹ Seld. Tit. Hon. 633.
- ⁶² Rap. Hist. 133.

SECTION II.

- ⁶³ Grand. Cust. 1. 8.
- ⁶⁴ Anno 812. Cap. Baluz. tom. 2. tit. 153. L'Espr. des L. 31, 28.
- ⁶⁵ Cap. Baluz. tom. 1. 439.
- ⁶⁶ Cap. Baluz. tom. 1. 486.
- ⁶⁷ Declaration of Charles the Bald. Art. 2.
- ⁶⁸ L'Espr. des L. 31. 24.
- ⁶⁹ Mez. from Louis the Pious to Capet. L'Espr. des L. 31. 31.
- ⁷⁰ Mez. 220.
- ⁷¹ L. L. Will. Conq. 22.
- ⁷² L. L. Will. Conq. 58.
- ⁷³ L. L. Will. Conq. 22. L. L. Hen. 1. 14.
- ⁷⁴ L. L. Will. Conq. 58.
- ⁷⁵ Domesday. Sp. Cod. in Will. Conq.
- ⁷⁶ L. L. Ælfr. 37. L. L. Edg. 2. L. L. Cnut. 1.
- ⁷⁷ The opportunity of rewarding the great men.
- ⁷⁸ Co. Litt. 37.
- ⁷⁹ L. L. Will. Conq. 22.
- ⁸⁰ L. L. Hen. 1. 20.

⁸¹ The answer of the Bishops to the Barons was,
 “ Nos Barones, & vos Barones, Pares hic fumus.”

M. S. De Vita S. Th. Cant. Whitel. Parl. 2. 9.

⁸² L. L. Will. Conq. 24.

⁸³ L. L. Will. Conq. 58.

⁸⁴ L. L. H. 1. 55. Spelm. Gloss. tit. Valvass.

⁸⁵ L. L. Hen. 1. de firm. Britt. 66. Somn.
 Gav. Th. 138. Litt. 118. Blackst. Com. 2. 80.
 Spelman speaks of Villein Socage in Cod. 289.—
 The Folcmote flourished in the Norman age; it
 consisted of all the vassals of the crown, whether
 military or socage. Hickef. Th. 2. 31, 32, 33, 35.

⁸⁶ Litt. —

⁸⁷ L. L. Will. Conq. 24.

⁸⁸ L. L. Will. Conq. Præm.

⁸⁹ L. L. Hen. 1. 1.

⁹⁰ Ch. Will. Conq. Hickef. Th. 2. 70. Ch.
 Will. Conq. Hickef. Th. 2. 78. Ch. Will. R.
 Hickef. Th. 2. 47.

⁹¹ Mat. Paris, 100. 390, 708, 696.

⁹² L. L. Edwd. Conf. 35.

⁹³ Conc. Lond. Sp. Conc. 2. 14. and 2. 15.
 Const. Sarum. Sp. Conc. 2. 137.

⁹⁴ Ch. Will. Conq. quæ fecernit placita ecclesi-
 astica civilibus. Sp. Conc. 2. 14.

⁹⁵ Ch. Will. Conq. Hickef. Th. 2. 70.

⁹⁶ The Bishops were comprehended under the
 name of the Barons, L. L. Hen. 1. 1.

⁹⁷ It was not till two centuries afterwards, that
 the name was appropriated to the Parliament of
 Paris by Philip the Fair. Du Haillan. 185, 185.

⁹⁸ *Parlement* a speaking, from *Parler* to speak.
 Lamb. Arch. Parl. See other derivations of Par-
 liament, Co. Litt. 110, and Hargrave's notes.
 Barr. Anc. Stat. 56. R. Parl. 1. 174.

⁹⁹ P. Verg. 177. Lamb. Court. 236, 237.
 Co. Litt. Mat. Paris. sparsim.

¹⁰⁰ Domesday. Dalrymp. Feud. Prop. 326.

¹⁰¹ Waltheof

¹⁰¹ Waltheof had Huntingdon and Northampton, and Radulf Norfolk, Suffolk, and Cambridge. We may suppose the like accumulations of the Baronies. Sp. Cod. 286.

¹⁰² Lib. Nig. Scac. Spelm. Gloss. tit. Vicecomes.

¹⁰³ Baldwin Baron of Okehampton, Visc. of Devon. Urson of Worcester, and Estoffenville of York. Sp. Cod. 286. and Gloss. tit. Vicec. There were no Earls at that time in those counties. Sp. Cod. 286.

¹⁰⁴ Hickef. Th. 2. 78, 70, and 47.

¹⁰⁵ Sp. Cod. 218. Gloss. tit. Justic. Mad. Hist. Exch. c. 4. For the power of Hugo de Boclande, Hubert de Burg, and William Mareshall, see Mat. Paris.

¹⁰⁶ Hickef. Th. 2. 70, 78, 47.

¹⁰⁷ Mat. Paris.

¹⁰⁸ See the award between Stephen and Henry I. in Parliament. Mat. Paris, 86.

¹⁰⁹ See Co. Litt.

¹¹⁰ Mag. Ch. 17 Johan.

¹¹¹ Hæc terra fuit tempore regis Edwardi Thainland, sed postea conversa est in Reveland. Domesday and Co. Litt. 86.

¹¹² Art. Chart. 27. Mag. Ch. Hen. 3. 30. Ed. Blackst.

¹¹³ The customs of Borough English, so different from the Norman opinions, refer the erection of the Boroughs to the Saxon age.

¹¹⁴ L. L. Ælfr. 36. L. L. Æthelr. 10.

¹¹⁵ Litt. 160 (Rent, &c.) Sp. Gloss. tit. Burg. L. L. Will. Conq. 61.

¹¹⁶ Litt. 162.

¹¹⁷ Mad. Firm. Burg. 1. 8.

¹¹⁸ Mag. Ch. Hen. 3. 32. Art. Ch. 27. Dalrymp. Feud. Prop. 329. Sir John Dalrymple allows that Primer Seisin was not required of the burghage tenants, yet assigns no reason for their exclusion.

clusion.—He nevertheless insists that burgage was a tenure in capite.

¹¹⁹ Co. Litt. 77.

¹²⁰ Blackst. Com. 1. 467.

¹²¹ Litt. 140. An abbot who holds in knight-service cannot serve in war, but must find a substitute or pay escuage.

¹²² Co. Litt. 99. Stat. Quia Emptores, c. 3. excepts alienations in Mortmain from its operation, so that the grant to the Abbot would have been void without the King's license, the efficacy of which is countenanced and confirmed by stat. 18 Ed. III. ft. 3. c. 3. But the license being obtained, the grant was only void so far as it respected the holding in frankalmoign of the grantor, for here the statute interposes, and ordains that the land should be holden of the immediate lord, by the same tenure as the grantor held it. See stat. Quia Emptores 18 Edwd. I.

¹²³ Litt. 123. Co. Litt. 189. Coke says, that since the time of Littleton (as appears by stat. Ph. and M. 1, and 2, 8, which indured twenty years, and has since been benignly interpreted) lands might be given by a man to be holden of himself in Frankalmoign. Co. Litt. 99. But Sir W. Blackstone says, on the authority of Littleton, 140, that none but the crown can give lands in Frankalmoign. Blackst. Com. 2. 102.

¹²⁴ Litt. 162.

¹²⁵ Litt. 163.

¹²⁶ Mag. Ch. Joh. 13.

¹²⁷ Mag. Ch. 14.

¹²⁸ Socage paid aids. Co. Litt. 91. Petit. Serj. & Burg. Socage. Litt.

¹²⁹ Co. Lit. 97.

¹³⁰ Co. Lit. 97. The Abbot of Feverham was never summoned.

¹³¹ 49 Hen. III. Rot. Parl. M. 15. dorfo. See Whitl. Parl. 2. 13.

¹³² Rot. Parl. 5 Hen. VIII. and 21 Hen. VIII. Co. Litt. 97.

¹³³ Matt. Paris.

¹³⁴ Blackst. Com. 1. 149.

THE END.



E R R A T A.

Page 5, line 20, *for* unitiated *read* uninitiated.

P. 25, l. 12, *for* Ceorlisca *r.* Ceorlisfs.

P. 58, l. 21, *for* Villain *r.* Villein.

P. 85, l. 19, *for* Mischianzi *r.* Mischianza.

P. 96, l. 3, *for* Gerafa *r.* Gerefa.

P. 100, l. 4, *for* leige *r.* liege.

P. 122, l. 12, *for* obeyance *r.* abeyance.

